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CONTENTS

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EIGHTEENTH ISSUE

Introduction

This edition covers the six month period from 1st July, 1994 to 31st December, 1994.

The original texts of legislation and judgments digested are available at the Greffe.

Whilst care has been taken in recording the material published herein no responsibility is accepted for the contents of this issue or its accuracy.

References to this issue in future issues will be cited using the figure and letters 18.GLJ. followed by the paragraph number.

Editorial Committee

Compiled from sources including all Orders in Council, Ordinances, Projets de Loi and subordinate legislation and selected cases and other relevant material which became available during the months July to December 1994.

31st August, 1994.

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OBITUARY

Sir John Loveridge, C.B.E., Bailiff of Guernsey from 1973 to 1982, died at the age of 82 on 7th November 1994. Educated at Elizabeth College, Sir John worked in local industry for a short time before joining the States Civil Service in December 1934.

It was during the Occupation that his considerable abilities were first recognised. He was appointed as the Secretary to the Essential Commodities Committee when that Committee was established in 1938. He continued in that post throughout the war years when the department oversaw not only the fair distribution of essential supplies but also the procurement thereof from France. In recognition of his services he was appointed a Member of the Order of the British Empire in 1946. After the war he continued his civil service career holding the post of Assistant States Supervisor.

Sir John then started reading for the English Bar. He went on to complete his studies in England and France prior to being sworn as an Advocate of the Royal Court in 1951. He was transferred to the Chambers of H.M. Procureur where he served as a Legislative Draftsman. In 1954 following the death of the then holder of the office, Mr. L. Caulfield Stoker, he was appointed H.M.Comptroller. In 1960 he became H.M. Procureur and in 1969 was appointed the Island's first Deputy Bailiff. Whilst the amount of judicial work in the early years of the existence of that office was not as great as it is today, Sir John became heavily involved in the negotiations relating to the position of Guernsey following the decision of the United Kingdom to join the European Community. He also led the Island's delegation which appeared before the Kilbrandon Commission on the Constitution. The results of this work, namely the embodiment of the Island's position vis-à-vis the Community in Protocol 3 to the Treaty of Accession and the Commission's recommendation that there be no change in the constitutional relations between the Islands and the United Kingdom, can in retrospect be regarded as very satisfactory outcomes from the Island's point of view for which Sir John could take considerable credit.

Sir John was extremely hardworking and expected similar dedication in others. He was not always an easy judge to appear before and he could appear uncompromising. However he instilled a great sense of constitutional and legal propriety. He will be remembered as a loyal supporter of those who worked under him.

Sir John was a devoted family man. As Bailiff in 1975 he had the unique distinction of presiding over the Royal Court when his son was sworn as an Advocate. The Guernsey Law Journal extends its sympathy to Lady Loveridge and the family.

HEADINGS USED IN THIS ISSUE

GUERNSEY

AGENCY

Powers of attorney

1. Projet de Loi: The Powers of Attorney and Affidavits (Bailiwick of Guernsey) Law, 1994. - Provides that a power of attorney (for whatever purpose), affidavit and other document specified by order of the Royal Court may be executed or sworn: anywhere in the Bailiwick, before a notary public; in Guernsey, Herm or Jethou, before a Jurat of the Royal Court; in Alderney, before a Jurat of the Court of Alderney; in Sark, before the Seneschal; and, in a place outside the Bailiwick, in accordance with the rules in force there. The Royal Court may by order specify other persons before whom such documents may be executed or sworn. The Law provides that a general power of attorney executed in the form set out in the Schedule shall give the donee authority to do anything the donor can lawfully do by an attorney (other than functions as a trustee, personal representative or guardian). Nothing in the Law affects the validity of a document executed or sworn in accordance with some other rule of law.

   Approved by the States of Guernsey 27.10.94 and by the States of Alderney 7.12.94. Awaiting approval of Chief Pleas and Royal Sanction.

AGRICULTURE AND ANIMALS

Control of poisonous substances

2. Order in Council: The Poisonous Substances (Guernsey) Law, 1994. - See 16.GLJ.3.

   Royal Sanction 18.5.94. Registered 23.8.94. In force on a day or days to be appointed. (No. XVIII of 1994).

Protection of animals - game

3. Ordinance: The Protection of Game Ordinance, 1994. - Consolidates, with amendments, the Protection of Game Ordinances, 1884 to 1990. The main change is to allow hunting for wild rabbits at any time of the year by a person in possession of the written authority of the owner or occupier of the land where the hunting takes place.

   In force 30.11.94. (No. XXXII of 1994).

BANKING, INSURANCE AND FINANCE INDUSTRIES

Banking supervision

4. Order in Council: The Banking Supervision (Bailiwick of Guernsey) Law,

1994. - See 16.GLJ.5.

Approved by the States of Alderney 2.3.94 and by the Chief Pleas of Sark 19.1.94. Royal Sanction 22.6.94. Registered 23.8.94. In force 1.10.94: The Banking Supervision (Commencement) Ordinance, 1994 (Ordinance No. XXVII of 1994). (No. XIII of 1994).

Bills of exchange

5. Order in Council: The Bills of Exchange (Amendment) (Bailiwick of Guernsey) Law, 1994. - See 16.GLJ.7.

Approved by the States of Alderney 2.3.94 and by the Chief Pleas of Sark 19.1.94. Royal Sanction 22.6.94. Registered and in force 23.8.94. (No. XIV of 1994).

Collective investment schemes

6. Ordinance: The Protection of Investors (Amendment) Ordinance, 1994. - Replaces Note D in Schedule 2 to the Protection of Investors Law (see 5.GLJ.5) with the effect that non-Guernsey schemes no longer require to be authorised under the Law unless both the scheme's manager (or delegate) and its trustee/custodian (or delegate) are Guernsey licensees.

In force 1.11.94. (No. XXIX of 1994).

BANKRUPTCY AND INSOLVENCY

Désastre - claim of individual creditor referred by Commissioner to Court - judgment creditor claiming full indemnity costs

7. At the meeting of creditors of A Limited, en désastre, C put in a claim exceeding £62,000 which was not accepted by the other creditors and which was therefore referred to the Royal Court. On an interlocutory application C was ordered to furnish the Court with supporting documentation but this was not done until the day of the opening of the hearing. Shortly before the hearing C had abandoned his claim to more than half of the original amount and more were abandoned or reduced during the course of the hearing. Further claims were rejected by the Jurats. Only seven of C's claims, amounting to under £7,000, were found to be valid and were conceded by the arresting creditor. On an application by the arresting creditor for full indemnity costs, HELD by the Deputy Bailiff, granting the application, that under Rule 48 of the Royal Court Civil Rules 1989, he could award full indemnity costs where "any party has ... pursued ... a claim unreasonably ... or has otherwise abused the process of the Court". C had acted unreasonably towards his fellow creditors in that he could have produced the documentation much earlier and that he should have presented his claim properly and for the proper amount. He had been reckless in the way he presented his claim and it would be wrong for the other creditors to have to pay any substantial part

of the costs of the reference to the Court.

[In Re The Apartment Limited (en désastre); Crispini v. Preferred Vegetable Service Limited - Plaids de Meubles 9.9.94 (NJB/JPG)].

COMPANIES

8. Order in Council: The Companies (Guernsey) Law, 1994. - See 17.GLJ.4.

Royal Sanction 14.12.94. Awaiting registration.

COURTS

Magistrate's Court - power to try charge of bigamy

9. X was charged with an offence of bigamy committed in Guernsey contrary to the Loi relative à la Bigamie of 1923. On the question whether the offence was triable by the Magistrate's Court, HELD by the Magistrate, although the 1923 Law provided that the Royal Court had power to try the offence of bigamy, the relevant provision related to offences committed outside the Bailiwick. In relation to an offence alleged to have been committed within the Island of Guernsey, section 10(1)(c) of the Magistrate's Court (Guernsey) Law, 1954 gave the Magistrate's Court jurisdiction.

[Law Officers of the Crown v. Henderson - Magistrate's Court 29.7.94 (ADL)].

CRIMINAL LAW AND PROCEDURE

Bigamy - jurisdiction of Magistrate's Court

10. See Law Officers of the Crown v. Henderson, paragraph 9.

Misuse of drugs

11. Projet de Loi: The Misuse of Drugs (Amendment) (Bailiwick of Guernsey) Law, 1994. - Amends the 1974 Law so as to enable the States, by Ordinance, to repeal and replace the First Schedule (which classifies controlled drugs); prohibits the supply etc. of articles for administering or preparing controlled drugs; and increases the penalties for offences under the Law.

Approved by the States of Guernsey 30.11.94. Awaiting the approval of the States of Alderney and Chief Pleas of Sark and Royal Sanction.

Sentence - misuse of drugs - importation of Class A drug

12. A pleaded guilty to the improper importation of 39 capsules of ecstasy having a total street value of between £1,170 and £1,365. He had not hidden the drugs on his body and was not physically obstructive to customs

officers although he told lies. The Court formed the view that he would have sold the drugs had the opportunity arisen but had received no personal benefit. He was 27 years old with no relevant previous convictions. He appealed against his sentence of four years' imprisonment to run from his arrest. HELD, having considered previous authorities, the appropriate sentence would have been one of three years' imprisonment. The appeal would be allowed to that extent.

[Law Officers of the Crown v. Chentrens - Court of Appeal 1.8.94 (HMP/AMM)]. (For full report of judgment of Court of Appeal see paragraph 81).

Sentence - misuse of drugs - new guidelines from the Royal Court

13. In sentencing to three years' imprisonment a 45 year old man who had pleaded guilty to importing 248 LSD tabs the Court indicated that it had reviewed its sentencing policy as stated in Law Officers v. Petit (1990) 10.GLJ.24 in view of the substantial increase there had been in cases involving the importation and possession with intent to supply of controlled drugs of both classes A and B. In future cases substantially higher sentences would be imposed.

The Court proposed to continue to separate cases involving possession and importation of small amounts for personal use from those involving importation and possession of amounts where there was direct evidence or where it could be properly inferred that the offender intended to pass the whole or part of the consignment on to other persons.

Generally it would be sufficient to deal with cases of importation or possession of small quantities of class B drugs for personal use by the imposition of a fine of several hundred pounds depending on the amount and the circumstances of the offender. However, where a particularly sophisticated method of importation had been used whether by concealing in the body or otherwise or where the importation had involved a misuse of the postal service serious consideration should be given to imposing a sentence of immediate imprisonment.

With regard to class A drugs for personal use the fines should be approximately one and a half those appropriate for class B possessions and importations with consideration again being given to imprisonment of those who used sophisticated methods of importation.

Turning to cases involving larger quantities where the inference was to be drawn that the offender was engaged in trafficking the starting point for sentencing would be, in the case of class B drugs, two and a half years and, in the case of class A drugs, four years. The lower sentences would be reserved for cases where there were guilty pleas and the quantity of the drug found in the possession of the offender was in the lower end of the range both in amount and value. As to the lower end in value the Court would at the present time be regarding this as £1,000 or less on the streets of Guernsey, always bearing in mind that that figure might properly be reduced downwards if the market were to be flooded and prices fell to those found elsewhere. Larger quantities of drugs for the Guernsey market would attract sentences of up to twice those indicated as starting points. Abnormally large consignments (which almost always

involve a consignment in transit through the Bailiwick) such as those found in the case of Rooke and others (1986) 3.GLJ.20 were likely to continue to be dealt with having regard to English sentencing guidelines.

As had been indicated in previous cases involving importation, longer sentences than the norm would be imposed where the offender had hidden the drug within his person or where the method used to conceal the drug was sophisticated and specifically designed to avoid detection by the law enforcement agencies.

Those involved in the organisation of importation and distribution of drugs in this Island without necessarily exposing themselves to the dangers of actual possession or physical importation could expect more substantial sentences.

[Law Officers of the Crown v. Oren - Crime 23.8.94 (HMC/MJR)].

Sentence - suspended sentence supervision orders

14. Order in Council: The Criminal Justice (Suspended Sentence Supervision Orders) (Amendment) (Bailiwick of Guernsey) Law, 1994. - See 17.GLJ.11.

Royal Sanction 24.11.94. Awaiting registration.

DIVORCE AND MATRIMONIAL PROCEEDINGS

15. Order in Council: The Domestic Proceedings and Magistrate's Court (Amendment) (Guernsey) Law, 1994. - See 17.GLJ.15.

Royal Sanction 2.11.94. Awaiting registration.

16. Projet de Loi: The Domestic Proceedings and Magistrate's Court (Amendment) (No. 2) (Guernsey) Law, 1994. - Amends the 1988 Law so as to enable a maintenance order to be made in respect of an illegitimate child consequent upon the grant of a custody order in respect of that child.

Approved by the States 28.9.94. Awaiting Royal Sanction.

ECCLESIASTICAL LAW

Jurisdiction of Ecclesiastical Court

17. Order in Council: The Ecclesiastical Court (Jurisdiction) (Bailiwick of Guernsey) Law, 1994. - See 16.GLJ.23.

Approved by the States of Alderney 2.3.94 and by the Chief Pleas of Sark 19.1.94. Royal Sanction 18.5.94. Registered 23.8.94. In force 20.9.94. (No. XV of 1994).

EMPLOYMENT

18. Order in Council: The Conditions of Employment (Amendment) (Guernsey) Law, 1994. - See 17.GLJ.17.

Royal Sanction 2.11.94. Awaiting registration.

EUROPEAN COMMUNITIES

European Economic Area

19. Projet de Loi: The European Economic Area (Bailiwick of Guernsey) Law, 1994. - Supplements the European Communities (Amendment) (Bailiwick of Guernsey) Ordinance, 1994 (see paragraph 20) by effecting amendments to existing legislation and making technical provision as respects EFTA institutions.

Approved by the States of Guernsey 28.9.94 and by the States of Alderney 7.12.94; not approved by the Chief Pleas of Sark.

20. Ordinance: The European Communities (Amendment) (Bailiwick of Guernsey) Ordinance, 1994 (see also paragraph 21). - By adding the 1992 Oporto Agreement and 1993 Brussels Protocol to the definition of the Treaties in the European Communities (Bailiwick of Guernsey) Law, 1973, this Ordinance requires all rights, powers, liabilities, obligations and restrictions arising under the agreement on the European Economic Area and applicable to the Bailiwick to be recognised and available in law, enforced, allowed and followed as part of the domestic law of each Island of the Bailiwick.

In force 28.9.94. (No. XIX of 1994).

European Union

21. Ordinance: The European Communities (Amendment) (Bailiwick of Guernsey) Ordinance, 1994 (see also paragraph 20). - Adds Titles II, III and IV of the Treaty on European Union, together with relevant Protocols, to the definition of the Treaties in the European Communities (Bailiwick of Guernsey) Law, 1973, thus implementing "the Maastrict Treaty" within the terms and status conferred on the Bailiwick by the 1972 Treaty of Accession of the United Kingdom to the European Communities.

In force 28.9.94. (No. XIX of 1994).

EVIDENCE

Affidavits

22. Projet de Loi: The Powers of Attorney and Affidavits (Bailiwick of Guernsey) Law, 1994. - See paragraph 1.

HARBOURS AND MOORINGS

23. Ordinance: The Parish of Torteval (Control of Moorings) (Amendment) Ordinance. - Amends the 1979 Ordinance so as to redefine the controlled area.

In force 27.7.94. (No. XVI of 1994).

HEALTH AND MEDICINE

24. Ordinance: The Health Service (Benefit) (Amendment) Ordinance, 1994. - Increases prescription charges for Guernsey and Alderney.

In force 1.1.95. (No. XXVI of 1994).

HEALTH AND SAFETY AT WORK

Inflammable oils

25. Order in Council: The Inflammable Oils (Amendment) (Guernsey) Law, 1994. - See 17.GLJ.25.

Royal Sanction: 18.5.94. Registered 23.8.94. In force 1.11.94: The Inflammable Oils (Commencement) Ordinance, 1994 (Ordinance No. XXXI of 1994). (No. XVII OF 1994).

26. Ordinance: The Inflammable Oils (Amendment) Ordinance, 1994. - Amends the Ordinance entitled "Ordonnance relative aux Huiles ou Essences Minérales ou autres substances de la même nature" made on the 23rd May, 1925, by requiring importers of inflammable oils to notify the Board of Employment, Industry & Commerce (BEIC) of imported consignments of oils; clarifies the powers of the Inspector in relation to the unloading of consignments; transfers powers to issue licences for storage of oils from the Royal Court and the Board of Administration to the BEIC; and increases penalties.

In force 1.11.94. No. XXX of 1994.

INCOME TAX

Computation of income

27. Projet de Loi: The Income Tax (Emoluments Amendments) (Guernsey) Law, 1994. - Makes clear that all benefits derived from any office or employment (whether or not convertible into cash and whether provided by the employer or a third party), and all payments in consequence of the termination of an office or employment or a change in its terms (whether pursuant to a legal obligation or not) are, subject to specific exceptions, chargeable to income tax. Sets out clearer criteria than formerly for ascertaining the value of benefits for tax purposes.

The normal basis for valuing a benefit is the cost to its provider, but

- where ownership of property is transferred the test is one of market value;

- as respects free or subsidised use of property (e.g. company cars) value is to be ascertained in accordance with regulations made by the Income Tax Authority;

- an "average cost" test is specified for free or subsidised services provided by an employer whose business is the provision of such services;

- amongst a number of exemptions set out in the Projet, the States are empowered to exempt specified benefits by Ordinance.

Apart from a clause which will require employers to distinguish benefits when making returns as to employees' emoluments from 1.1.97, the revisions are to apply from 1.1.96; it is intended that an Ordinance excluding areas where a charge to tax is considered unreasonable from a social or practical point of view will operate from the same date, as will valuation regulations.

Approved by the States 28.9.94. Awaiting Royal Sanction.

Pensions

28. Order in Council: The Income Tax (Pension Amendments) (Guernsey) Law, 1994. - Allows individuals to have a greater choice as to when benefits may be taken from approved occupational pension schemes, retirement annuity schemes and retirement annuity trust schemes.

Approved by the States 27.7.94. Royal Sanction 2.11.94. Awaiting registration.

INDIRECT TAXATION

29. Ordinance: The Indirect Taxes, Duties and Impôts (Increase of Rates) (Budget) Ordinance, 1994. - Increases motor tax, and the impôt on tobacco, alcohol and petrol.

In force as to impôts 14.12.94 and as to motor tax 1.1.95 (No. XXXIX of 1994).

LAND LAW

Rights of way - right of way on foot and with wheelbarrow - extent - partial loss by non-user

30. P was seeking a declaration from the Court as to the exact boundary between his property and that of D and directions as to whether the right of way which D enjoyed over P's property still existed.

In directing the Jurats the Deputy Bailiff HELD:-

(1) That a right of way on foot and with wheelbarrow did not include a right to lead animals over the right of way.

(2) That the right of way was severable to the extent that the right to take a wheelbarrow could be lost by twenty years non-user whereas a right of way on foot might still subsist.

(The Jurats subsequently on a second vue de justice gave detailed directions as to the position of the boundary and the right of way on foot that they found still existed.)

[Slawther v. Smith - Plaids de Meubles 1.12.94 (PTRF/PMAP)].

LANDLORD AND TENANT

Lease - obligation to repair and redecorate before end of term - breach - measure of damages - effect of subsequent renovation work by landlord

31. P was the landlord of premises formerly let to D. The lease obliged D to "keep the demised premises in a good and substantial state of structural and ... decorative repair" and to paint the premises at specified times, including the last year of the lease. At the termination of the lease P claimed from D a sum representing the cost of various works of repair and redecoration set out in a "Terminal Schedule of Dilapidations and Wants of Repair" produced by its surveyor. In fact, after D vacated the premises, P had redeveloped the building and the Schedule of Dilapidations was thus purely hypothetical. At a preliminary hearing, the Deputy Bailiff HELD that it was clear that D was in breach of its obligation to redecorate, the effect of which essentially required the tenant to pass the premises back to the landlord in such a condition whereby it could be re-let or used by the landlord itself. However, the landlord, having chosen to redevelop, could only recover the loss which actually flowed from the failure to repair and redecorate and not, in the absence of express agreement from the tenant, the costs of carrying out work which the renovations had made wholly abortive. This loss could be ascertained by identifying those parts of the redevelopment costs which were incurred or enhanced as a result of the failure of the tenant to comply with its obligations.

[Bilton v. Maples - Plaids de Meubles 5.12.94 (PMAP/PAH)].

PRACTICE AND PROCEDURE (CIVIL)

Application for guardianship - Advocate appearing as Attorney - Practice Direction

32. The Court requires that where an Advocate of the Royal Court is to appear as Attorney in applications for guardianship, the application for the appointment of a guardian should be presented to the Court by another member of the Bar.

The practice of Advocates moving from the Counsel benches to the witness stand should cease.

[Practice Direction No. 4 of 1994].

Application for hearing date - advance date - Practice Direction

33. Applications submitted for a civil trial hearing date in advance will be placed before the next sitting of the Interlocutory Court for the Bailiff or Deputy Bailiff to give directions.

All of the provisions of Practice Directions Nos. 1 and 2 of 1992 (see 13.GLJ.49 and 50) should be complied with before any such applications are submitted.

[Practice Direction No. 5 of 1994].

Limitation of actions - action for personal injury - application for time limit to be overridden - factors to be taken into consideration

34. P, who was from Madeira, was recruited to work in Guernsey for two months repairing greenhouses following the hurricane in 1987. His work permit specified that he was to work for D but he was given instructions by C. He suffered a serious eye injury while using a drill and required to have an operation, after which he returned to Madeira. Before he returned, however, he discussed the situation with D who advised him that he might have a claim for compensation in respect of the injury but that it might take up to six years for the compensation to be awarded. P went to see an advocate with a Portuguese interpreter, in consequence of which consultation a letter was sent to D alerting him to the potential claim. P claimed that he had given the advocate an address in Madeira but the advocate's evidence that he had not done so was accepted by the Deputy Bailiff. The advocate subsequently wrote to the interpreter, who she understood was to be her contact with P, on several occasions but received no reply and no further action was taken. In 1992 P contacted D and instructed solicitors in England in relation to the claim but it was not until 1993, having been advised by his original advocate that his claim was now time-barred, that a summons was issued against D. D pleaded that the action was statute barred under section 5 of the Law Reform (Tort) (Guernnsey) Law, 1979 and P applied for an order under section 8 directing that section 5 should not apply and that the time limit should be overridden in his case. The Deputy Bailiff HELD:-

1. In exercising his discretion as to whether to allow the action to proceed, the first matter to consider was the degree of respective prejudice to P and to D. In this regard there were three separate considerations:-

(a) He had concluded that any action in negligence against P's first advocate had very poor prospects of success because she had received no communication from him after the initial consultation and was entitled to assume, having written to the address she had been given, that she was no longer instructed by P. Therefore the degree of prejudice to P if the claim were not

allowed to proceed would be greater than if he did have a good claim against the advocate.

(b) Further, it was necessary to examine the strength of P's claim. D did not dispute that P had a prima facie claim but averred that the action should have been taken against C. However, the Deputy Bailiff, being satisfied that P had a prima facie case for compensation for his injuries, did not consider that he should load the scales against him on grounds that he had a weak claim against D.

(c) Finally, on the question of prejudice to D, there were sufficient written medical reports so that it was unlikely that assessing the value of his claim would be made any more involved by the delay and D had in any case been put on notice of the claim by P's original advocate and could be expected to have investigated the accident so would not be unduly prejudiced.

2. In relation to the considerations set out in section 8(3):-

(a) The first issue was the length of and reasons for the delay on the part of P. The test was whether a reasonable workman would have done what P had done in the circumstances. It was proper to be more sympathetic to P who spoke little English and had returned to Madeira than to a local man in the same situation. Although P had been naive he had been advised that the claim would take a long time and believed that proceedings were in hand.

(b) On the question of the extent to which, having regard to the delay, the evidence to be adduced was likely to be less cogent, the accident should have been investigated at the time of the accident and, although there was a presumption, laid down in Buck v. English Electric Co. Ltd (1978) 1 All ER 271, that the evidence after a delay in excess of five years would be less cogent, the inference that investigations had taken place led to the Deputy Bailiff's view that the presumption had been rebutted.

(c) The third consideration was the conduct of D after the cause of action arose. No criticism could be made of D although he had given P the impression that he probably would be compensated and that the claim would take a long time which to some extent mitigated the blame to be attached to P in not expediting his claim.

Applying the above tests and balancing the interests of P against D, section 5 would not apply and the action would be allowed to proceed.

[Camacho v. Stan Brouard Limited - Interlocutories 5.12.94 (JMW/EAGP)].

Pleadings

35. The Court of Appeal on the 19th and 20th October, 1994 handed down a long and complex judgment in the interlocutory appeal of International Hellenic Operations Limited and others against Silver Falcon Enterprises Limited and others. A copy of the judgment and its appendices are available for examination at the Greffe. In view of its length and complexity it is not proposed at the present time to print or digest the judgment in the Law Journal. However the following issues were considered in the judgment:-

1. Pleadings generally.

2. Issues of conspiracy, joint venture, damage to business and procurement of breach of contract where the plaintiffs were alleging that a large number of defendants had been party to arrangements whereby the plaintiffs were deprived of a right to earn commissions on arms sales.

3. The Court allowed the appeal of two partners in a local firm of accountants and their in-house trust company against being joined as defendants.

4. The Court in awarding costs permitted a multiplier of four in view of the exceptional complexity of the proceedings pursuant to rule 33 of the Royal Court (Costs and Fees) Rules 1990.

Conditional leave was granted to the respondents to appeal to the Privy Council.

[Counsel appearing JNvL/PTRF/RJC/JPG].

Royal Court - withdrawal of Causes - Practice Direction

36. It will not be possible to withdraw causes from the Court list after 9.30 a.m. on the morning of Court. The Court agenda will not be altered by the Bailiff's office after that time.

Any matter included on the agenda must be tabled before the Court - and adjourned or withdrawn in Court as appropriate. Matters so tabled will be charged in the normal way.

Causes to be withdrawn should first be withdrawn from the Bailiff's office and the Greffe cause withdrawn afterwards - the 9.30 a.m. deadline applies to the Bailiff's office.

[Practice Direction No. 6 of 1994].

PUBLIC ASSISTANCE

37. Ordinance: The Central Outdoor Assistance Board Regulations (Amendment) Ordinance, 1994. - Increases ordinary maximum rates of outdoor assistance and the income limit above which such assistance is not payable.

In force 30.11.94. (No. XXXIV of 1994).

RATING

38. Projet de Loi: The Tax on Rateable Values (Amendment) (Guernsey) Law, 1994. - Amends the Tax on Rateable Values (Guernsey) Law, 1976 by providing that TRV shall be payable on the earlier date of 10th July (or such other date as the States may by Ordinance prescribe) in each year; that TRV shall henceforth be payable by the owner for the time being of the property; that where more than one person is the owner of the property, their liability shall be joint and several; that the Committee may levy penalties for late payment (£10 per month or interest at 10%); and makes provision as to the service of notices.

    Approved by the States 27.10.94. Awaiting Royal Sanction.

39. Ordinance : The Tax on Rateable Values (Amendment) (Guernsey) Ordinance, 1994. - Increases the rates at which the tax is to be assessed (in the case of domestic properties, to £1.22 per pound).

    In force 14.12.94 (No. XXXVII of 1994).

REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES

40. Order in Council: The Marriages (Amendment) (Guernsey and Sark) Law, 1994. - Amends the Laws relating to the celebration of marriages in the Islands of Guernsey and Sark so as to empower the Royal Court to grant a licence in relation to a specified building permitting marriages which would otherwise take place in office of the Registrar to be celebrated in that building. Only one building in each island may be so licensed at any one time.

    Approved by the States 25.11.93 and by the Chief Pleas of Sark 19.1.94. Royal Sanction 18.5.94. Registered and in force 23.8.94. (No. XIX of 1994).

ROAD TRAFFIC AND PUBLIC TRANSPORT

Parking places

41. Ordinance: The Road Traffic (Parking Places) (Amendment) Ordinance, 1994. Amends the 1963 Ordinance so as to empower the States Traffic Committee, following a single insertion in La Gazette Officielle, to alter the designated parking time of any disc parking place or approved parking place for any continuous period not exceeding one month.

    In force 27.7.94. (No. XVIII of 1994).

Prohibited and one-way streets

42. Ordinance: The Prohibited and One-Way Streets (Amendment) Ordinance, 1994. - Amends the 1989 Ordinance so as to make part of Back Street one-way and making a part of Contrée Mansell a prohibited street.

    In force 27.7.94. (No. XVIII of 1994).

43. Ordinance: The Prohibited and One-Way Streets (Amendment) (No. 2) Ordinance, 1994. - Further amends the 1989 Ordinance so as to enable the States Traffic Committee to amend Schedules 1 and 2 of the Ordinance by Order provided that an experiment has been enforced for a continuous period of between nine and twelve months, that any objections are considered by the Committee and that publication in La Gazette Officielle of its intention to make such an Order is made on two occasions before the coming into force of the Order. The Ordinance also alters the one-way system at La Planque Lane and Les Nouettes, Forest.

In force 30.11.94. (No. XXXIII of 1994).

Road humps

44. Order in Council: The Road Traffic (Road Humps) (Amendment) (Guernsey) Law, 1994. - Amends the Law of 1983 so as to transfer the functions under that Law from the Island Police Committee to the States Traffic Committee; to simplify the procedure for retaining experimental road humps and for directing the dimensions of road humps; and to make provision for the construction of temporary road humps without the necessity to follow the usual formalities, subject to certain conditions.

Approved by the States 27.7.94. Royal Sanction 24.11.94. Awaiting registration.

45. Ordinance: The Road Humps Ordinance, 1994. - Approves road humps in Courtil Michelle, St Saviour's and Rue Flère, Vale.

In force 28.9.94. (No. XXVIII of 1994).

SHIPPING

Third party insurance

46. Order in Council: The Vessels and Speedboats (Compulsory Third Party Insurance) (Amendment) (Guernsey) Law, 1994. - See 17.GLJ.38.

Royal Sanction 24.11.94. Awaiting registration.

SOCIAL SECURITY

Attendance and invalid care allowances

47. Ordinance: The Attendance and Invalid Care Allowances Ordinance, 1994. - Increases amount of income disregards and increases rates of attendance allowance and invalid care allowance for the purposes of the Attendance and Invalid Care Allowance (Guernsey) Law, 1984.

In force 7.11.94. (No. XXIV of 1994).

Social insurance

48. Ordinance: The Social Insurance (Rates of Contributions and Benefits, etc.) Ordinance, 1994. - Specifies new rates of social insurance contributions, new weekly and monthly earnings limits, the amount of the States Allocation to the Fund and all new rates of social insurance benefits and grants.

In force as to increases of rates of benefits 1.1.95 and as to other provisions 7.11.94. (No. XXV of 1994).

49. Ordinance: The Social Insurance (Reciprocal Agreement with the Republic of Cyprus) (Amendment) (Guernsey) Ordinance, 1994. - Gives effect to the Agreement between the Governments of Cyprus and the United Kingdom which modifies the Agreement given effect by the Social Insurance (Reciprocal Agreement with the Republic of Cyprus) (Guernsey) Ordinance, 1978.

In force 4.7.94. (No. XXXV of 1994).

50. Ordinance: The Social Insurance (Reciprocal Agreement with Great Britain, Northern Ireland, the Isle of Man and Jersey) (Guernsey) Ordinance, 1994. - Gives effect to the Agreement between Great Britain, Northern Ireland, the Isle of Man, Jersey and Guernsey.

In force 2.11.94. (No. XXXVI of 1994).

Supplementary benefit

51. Ordinance: The Supplementary Benefit (Classes of Persons to whom the Law applies) (Amendment) Ordinance, 1994. - Amends 1988 Ordinance so as to add to the categories of persons to whom the Supplementary Benefit (Guernsey) Law, 1971 applies a person who has given up work to care for his or her child who is over school-leaving age.

In force 28.9.94. (No. XX of 1994).

52. Ordinance: The Supplementary Benefit (Implementation) (Amendment) Ordinance, 1994. - Increases the limits of weekly income beyond which benefit is not payable and increases the weekly amounts of normal monetary requirements for specified classes of person.

In force 11.11.94. (No. XXII of 1994).

TORTS

Nuisance - defence of statutory authority - public interest

53. AA appealed against the decision of the Royal Court (see 15.GLJ.62) which had found that AA, members of the Guernsey Rifle Club, had caused a nuisance by shooting at a quarry neighbouring RR's property. That Court had ordered that AA be restrained "from continuing the said nuisance", such order to be stayed for five years. On appeal, AA argued that the Deputy Bailiff was wrong to rule that the defence of statutory authority

was not available to AA. RR cross-appealed against the five year suspension of the injunction. HELD, following Managers of the Metropolitan Asylum District v. Hill (1881) AC 193, an individual's right to sue in nuisance could only be taken away by statute that either expressly or by necessary implication did so. Furthermore, those who seek to establish that the legislature intended to take away such private rights had the burden of showing that such an intention appeared. The relevant sections of the Firearms (Guernsey) Law, 1983 and the Firearms Ordinance, 1987 made thereunder were designed primarily to prevent crime and to preserve public safety and did not encompass the overriding of the private rights of individuals. AA's appeal would be dismissed. On the cross-appeal, HELD, having observed that a better wording of the injunction would have been "an injunction restraining [AA] from any shooting at the said site", in the circumstances of the case a stay of three years, dating from the judgment of the Royal Court, should be substituted. The Court also observed that, had it been able to consider the matter of public interest (referring to Allen v. Gulf Oil Refining Ltd (1981) 1 AER 353), it should have had regard to the considerable esteem in which the Guernsey Rifle Club was held in the island as well as to the requirements of the Island Police, matters which would not have been conclusive but in respect of which the weight to be attached to them might be greater in a small island community than in a larger community.

[Guernsey Rifle Club v. Dadd - Court of Appeal 3.8.94 (JPG/NJB)]. (For full report of judgment of Court of Appeal see paragraph 83).

Trespass to land - quantum of damages

54. A, the owner of a strip of land bordering on the property of R, was awarded £10 damages in the Royal Court, on appeal from the Petty Debts Court, for trespass to land against R who had created a footpath, cut back trees and a hedge and cleared back undergrowth on A's strip of land, the effect of which was to increase the apparent width of R's land and reduce A's privacy (see 13.GLJ.12). He appealed against the award. HELD by the Court of Appeal, actual damage had been sustained by A's land and mere nominal damages could not be appropriate. The limit of the jurisdiction of the Petty Debts Court was £1,000 which was not too much in respect of such works on someone else's land. The appeal would be allowed and the sum of £1,000 substituted for that of £10.

[Hugo v. Skillett - Court of Appeal 1.8.95 (unrep/IHB). (For full judgment of Court of Appeal, see paragraph 82).

WILLS AND ADMINISTRATION OF ESTATES

Ecclesiastical Court - jurisdiction

55. Order in Council: The Ecclesiastical Court (Jurisdiction) (Bailiwick of Guernsey) Law, 1994. - See paragraph 17.

Wills - execution

56. Order in Council: The Execution of Wills (Bailiwick of Guernsey) Law, 1994. - See 16.GLJ.69.

Approved by the States of Alderney 2.3.94 and by the Chief Pleas of Sark 19.1.94. Royal Sanction 18.5.94. Registered 23.8.94. In force 20.9.94. (No. XVI of 1994).

GUERNSEY STATUTORY INSTRUMENTS

57. The following Statutory Instruments were made during the period covered by this issue. Except where otherwise indicated they have not been digested in detail. A reference copy of each is held at the Greffe and copies may be obtained from the relevant Committee.

Title	Date Made	Coming into force	No.
The Milk (Retail Prices) (Guernsey) Order, 1994	1.7.94.	3.7.94	6
The Parking Places (Amendment) Order, 1994	20.7.94	1.8.94	7
The Health and Safety (Fees) Order, 1994	21.7.94	28.9.94	8
The Post Office (Overseas Letter Post) (Amendment) (No. 2) Order, 1994	2.8.94	8.8.94	9
The Post Office (Inland Post) (Amendment) Order, 1994	2.8.94	8.8.94	10
The Health Service (Medical Appliances) (Amendment) Regulations, 1994	6.9.94	1.1.95	11
The Post Office (Postal Order) (Amendment) Order, 1994	6.9.94	1.10.94	12
The Licensees (Conduct of Business and Notification) (Non-Guernsey) Schemes) Rules, 1994	13.9.94	1.11.94	13
The Banking Supervision (Bailiwick of Guernsey) Regulations, 1994	16.9.94	1.10.94	14
The Financial Services Commission (Fees) (Amendment) Regulations, 1994	16.9.94	1.10.94	15
The Financial Services Commission (Fees) (Amendment No. 2) Regulations, 1994	16.9.94	1.11.94	16
The Wireless Telegraphy Apparatus Order, 1994	23.9.94	1.12.94	17
The Rabies (Amendment) Order, 1994	20.9.94	1.10.94	18
The Social Insurance (Classification) (Amendment) Regulations, 1994	29.9.94	1.1.95	19
The Social Insurance (Contributions) (Amendment) Regulations, 1994	29.9.94	1.1.95	20

The Social Insurance (Increase of Benefit) Regulations, 1994	29.9.94	7.11.94	21
The Banking Supervision (Accounts) Rules, 1994	29.9.94	1.10.94	22
The Impots (Temporary Variation of Rates) Order, 1994	25.11.94	28.11.94	23
The Income Tax (Guernsey) (Annuity Scheme Contribution Limits) Regulations, 1994	8.12.94	1.1.95	24
The Health Service (Pharmaceutical Benefit) (Amendment) Regulations, 1994	13.12.94	1.1.95	25

UNITED KINGDOM STATUTORY INSTRUMENTS

58. The following is a list of Statutory Instruments made in the United Kingdom which are specifically applicable to Guernsey and which were registered here during the period covered by this issue. Unless otherwise indicated they are not digested in detail elsewhere in the Journal.

	S.I. Number
The South Africa (United Nations Embargo) (Prohibited Transactions) Revocations Order, 1994	1636
The Social Security (Cyprus) Order, 1994	1646
The Criminal Justice Act 1993 (Commencement No. 7) Order, 1994	1951
The Backing of Warrants (Republic of Ireland) (Rule of Speciality) Order, 1994	1952
The Former Yugoslavia (United Nations Sanctions) (Channel Islands) Order, 1994	2675
The Former Yugoslavia (United Nations Sanctions) (Channel Islands) (Amendment) Order, 1994	2797
The Intelligence Services Act 1994 (Channel Islands) Order, 1994	2955

ALDERNEY

AGRICULTURE AND ANIMALS

Animal diseases

59. Ordinance: The Cattle Diseases (Compensation) (Alderney) Ordinance, 1994. - Brings compensation for slaughter of cattle infected with brucellosis and bovine tuberculosis into line with that payable in cases of foot and mouth disease.

In force 7.12.94. (Ordinance of the States of Alderney of 7.12.94).

Pest control

60. Ordinance: The Destruction of Rats (Amendment) (Alderney) Ordinance, 1994. - Amends the Destruction of Rats Ordinance, 1991 by transferring certain functions thereunder to the Clerk of the States.

In force 2.11.94. (Ordinance of the States of Alderney of 2.11.94).

COMPANIES

61. Order in Council: The Companies (Alderney) Law, 1994. - Repeals the Law entitled "Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée" of 1894 and the Companies (Amendment) (Alderney) Law, 1962 and replaces them with comprehensive modern legislation relating to companies.

Part I of the Law, entitled **"Company Formation"**, provides that it is now lawful for one person to form a company. A company's memorandum of association can now state that the company's objects are to be unlimited. A company's memorandum of association is to be registered by the Registrar (an office to be held by the Clerk of the Court of Alderney) in the Register of Companies. The Court may by order authorise the rectification of any minor error or formal defect in a company's memorandum. The Court may also declare whether or not a company's proposed name contravenes any provision of section 31 (which lays down requirements in respect of company names). A company's articles of association are to be annexed to and registered with the memorandum. The Alderney Finance Committee may, after consultation with the Financial Services Commission, by regulation prescribe a standard table of articles. This has now been done for private companies with a share capital.

On registration of a company's memorandum and articles the company is thereupon incorporated and the memorandum and articles bind the company and each of its members. In cases where a company's memorandum so provides, the company's objects and powers are to be unlimited.

The liability of a member of a company for the company's debts is limited to the amount, if any, unpaid on the shares held by him. On registration of a company the Registrar must give a certificate of registration and registration number in respect of the company. A company must on request provide members with a copy of its memorandum and articles and special

resolutions. No minor or person under legal disability may be a founder member of a company or become a shareholder except by inheritance or operation of law.

Part II of the Law, entitled **"Public and Private Companies"**, provides for a legal distinction between public and private companies. A public company is a company the memorandum of which states or is deemed to state that it is a public company. The memorandum of a company which has more than 20 members is deemed to state that it is a public company. A private company may not increase the number of its members beyond 20 (excluding certain specified persons such as directors) or offer its shares to the public by means of a prospectus, advertisement or other offer for subscription or sale.

Part III of the Law, which is entitled **"Companies limited by Guarantee"**, enables a company to be incorporated in Alderney with the liability of its members limited by the memorandum to the amount which the members undertake to contribute to the assets in the event of a winding up. Such a company has no share capital.

Part IV of the Law, entitled **"Corporate capacity"**, provides that an act done by a company shall not be invalidated on the ground of lack of capacity in the company's memorandum (although it remains the duty of the directors to observe any limitation on their powers imposed by the memorandum); that a document is executed by a company by the affixing of its common seal, but that a company need not have a common seal, in which case a document signed by a director and secretary, or by two directors, has the same effect as if executed under common seal; that a company may give a power of attorney; that in favour of a person dealing with a company in good faith, the power of the directors to bind it is deemed free of any limitation imposed by the memorandum or articles; that a party to a transaction with a company is not bound to enquire as to whether the transaction is permitted by the company's memorandum; that a contract made before a company is incorporated has effect as if made with the person purporting to act for the company (unless the company subsequently ratifies it); and that a public company offering its shares to the public shall not be entitled to commence business or exercise borrowing powers until the minimum subscription has been allotted and the registrar has certified that the company is entitled to commence business.

Part V of the Law is entitled **"Alteration of Memorandum & Articles"**. A company may only alter its memorandum in the cases expressly provided for by the Law. A company may, by special resolution, alter its objects (subject to the powers of the Court to annul the alteration) and any provisions of its memorandum which could have been in its articles or any provision of its articles.

Part VI of the Law, which is entitled **"Name, office and seal"**, provides that a company may by special resolution change its name; that the Court may direct a company to change its name or refuse an application for an order confirming a change of company name if satisfied that the name does not comply with prescribed criteria; that a company shall at all times have a registered office in Alderney where all legal process may be served; that a company's name shall be displayed outside its registered

office or in a conspicuous position within it; that the Court may by order direct that any specified premises shall cease to be the registered office of a particular company (thereby effectively "evicting" a company from its registered office); that a company may have a common seal and an official seal for use abroad; and that the company's name and registered office must appear on company documents.

Under Part VII of the Law, which is entitled **"Annual return"**, all companies must, in each calendar year before the 31st January, complete an annual return relating to its directors, members and share capital and deliver a copy of the return to the Registrar. If the requisite information has not changed since the 1st January in the preceding year the return can be in abbreviated form.

Part VIII of the Law, which is entitled **"Share capital"**, provides the formalities to be complied with by public companies before they can allot share capital; that a return of any such allotment is to be made to the Registrar; that there are to be restrictions on the payment of commission, discounts or allowances to any person in consideration of his subscribing for shares; that different amounts may be paid up on shares; that a company may by special resolution establish a reserve liability which shall not be called up except in the event of the company being wound up; that a company may purchase its own shares or give financial assistance for the purchase of its own shares subject to specified conditions; that if a company issues shares at a premium, the aggregate amount of the premiums must (subject to merger relief and relief in respect of group reconstructions) be transferred to the share premium account which can only be used for specified limited purposes; that a company may in specified circumstances issue its shares at a discount; that where a company pays commission or allows a discount on the issue of any of its shares, the company shall include in its annual return particulars thereof; that a company may, if so authorised by its articles, alter its share capital or issue redeemable preference shares, fractional shares, low value shares, non-voting shares or shares which have no nominal or par value; that, subject to safeguards, a company may vary the rights attached to any class of the company's shares; and for the nature, transfer and numbering of shares (including the transfer of shares of a deceased member).

Part IX of the Law is entitled **"Distributions"**. It restricts the distributions which a company can make out of its profits and provides for the consequences of unlawful distributions.

Part X of the Law, entitled **"Reduction of share capital"**, provides that, subject to the confirmation of the court, a company may by special resolution reduce its share capital in any way.

Part XI of the Law is entitled **"Company records and accounts"**. It provides for the keeping of minute books, a register of directors and company secretaries and a register of members. It also provides for the inspection of minute books and registers; for the keeping of accounting records; for the form of company records and the use of computer records; and for the use of the company's registration number.

Part XII of the Law, which is entitled **"Audit"**, makes provision as to the appointment and remuneration of auditors by all companies other than private unaudited companies; as to the qualification for appointment as auditor; as to the auditors' report; and as to the auditors' powers and duties;

Under Part XIII of the Law, entitled **"Directors and company secretaries"**, a private company must have at least one director; a public company at least two. The duties of directors to act in good faith and in the best interests of the company are stipulated. Directors interested in a transaction proposed to be entered into by the company must declare the nature and extent of the interest to the company. Any provision for exempting any officer or auditor of a company from, or indemnifying him against, any liability for his negligence, default, breach of duty or breach of trust is declared to be void. Directors required by the company's articles to hold a qualifying number of shares must comply with the requirement.

A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him. A director has the right to protest against such removal. The Court is empowered to make disqualification orders prohibiting any person, without the leave of the court, from being a director or other officer of any company or any specified company. A director's acts are deemed to be valid notwithstanding any defect subsequently found in his appointment or qualification.

Every company must have a secretary. A sole director of a company shall not also be the secretary thereof. The qualifications of a secretary of a public company are prescribed. Notice of any change of director or company secretary is to be given to the Registrar.

Under Part XIV of the Law, which is entitled **"Meetings"**, every company must hold an annual general meeting of its shareholders. A directors' report is to be circulated prior to such meetings. A private company may dispense with its AGM if all members so agree. General provisions as to meeting are laid down. Extraordinary general meetings may be called by means of a members' requisition. Provision is made as to voting rights of company members and as to the convening of meetings. The formalities for the passing of special resolutions are specified. Private companies may pass written resolutions.

Part XV of the Law is entitled **"Protection for members"**. Any member of a company may apply to the court for an order restraining an act beyond the company's capacity or beyond the powers of the directors. In addition, any member of a company may apply to the court for an order on the ground that the affairs of the company are being conducted in an unfairly prejudicial manner.

In Part XVI of the Law, which is entitled **"Striking off"**, the cases in which and conditions subject to which the Registrar may strike a company off the Register are laid down; and the procedure for the reinstatement of a company to the Register is also specified.

Part XVII of the Law is entitled **"Voluntary winding up"**. A company may be wound up voluntarily by special resolution. Notice of the special resolution to wind up must be given in the Gazette. The voluntary winding up is deemed to commence upon the special resolution being entered in the Register. From the commencement of a voluntary winding up, the company must cease to carry on business and no share transfers can be made. The Company in general meeting must appoint a liquidator. Any vacancy in the office of liquidator can be filled by the court or by the company in general meeting. The functions of the liquidator are to realise the company's assets, discharge the company's liabilities and distribute any surplus amongst the members.

On the expiration of a year and on each anniversary of the commencement of the winding up the liquidator must, if the winding up is not complete, summon a general meeting of the company. A final meeting is to be held prior to dissolution giving the liquidator's account of the winding up. Certain powers are capable of delegation to creditors. A liquidator or shareholder of a company which is being voluntarily wound up may apply to the court for directions concerning any aspect of the winding up. The court has power to order the removal of a liquidator. All costs, charges and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, are payable in priority to all other claims.

In Part XVIII of the Law, entitled **"Compulsory winding-up"**, the circumstances in which the court may order the compulsory winding up of a company are laid down, one being where the company is "unable to pay its debts" within the meaning of the Law. On the making of an application for the compulsory winding up of a company or at any time thereafter the court may make an order restraining any action or proceeding pending against the company or appointing a provisional liquidator. In a compulsory winding up the court must appoint a liquidator, upon whose appointment all powers of the directors cease. A liquidator may resign from office or may be removed from office by the court. When the liquidator has realised the company's assets he must apply to the court for the appointment of a commissioner of the court to examine his accounts and to distribute the funds derived from the company's assets. All expenses of a compulsory winding up including the remuneration of the liquidator are payable from the company's assets in priority to all other claims.

Part XIX of the Law is entitled **"Provisions of general application in winding up"**. Subject to any rule of law as to preferential payments and of any subordination agreement the company's assets in a winding up are to be applied in satisfaction of the company's debts and liabilities pari passu. Any surplus is then distributed among the members. A company must not undertake business once wound up. Where in the course of the winding up of a company it appears that any officer of the company has appropriated, retained, misapplied or otherwise become accountable for any of the company's assets, the court may order him to repay, restore or account for the loss. If it appears that any business of the company has been carried on with intent to defraud creditors, the court can order those responsible to make such contributions to the company's assets as the court thinks proper. Similar powers apply where the company has gone into insolvent liquidation with the knowledge of an officer (so-called

"wrongful trading"). The liquidator's fees are to be fixed by the court. The court is empowered to set aside fraudulent preferences. A liquidator may at any time seek the court's directions.

Under Part XX of the Law, entitled **"Inspectors"**, either the court or the company itself may appoint inspectors to investigate and prepare a report upon the affairs and financial position of the company. Inspectors have statutory powers to call for witnesses and documents and to administer the oath or affirmation. It is an offence to obstruct an inspector. The inspectors are to prepare a report the contents of which are to be admissible in evidence with regard to the facts stated in it. Provision is made as to the costs of the investigation.

Part XXI of the Law, which is entitled **"External companies"**, makes provision as to the registration and control of external companies and their activities. An external company is a body corporate incorporated outside Alderney which carries on business in Alderney or which has an address in Alderney used regularly for the purposes of its business.

Part XXII of the Law is entitled **"Miscellaneous"**. It provides for the Registrar to give a certificate of good standing in relation to a company; for the court to give relief against personal liability where the person in question ought fairly to be excused; for penalties for offences under the Law; for the specific offence of making false statements; for the criminal liability of the officers of companies which are themselves convicted of offences; for the manner of making applications to the court; for the payment of fees; for the service of documents; for the exclusion of liability of the Registrar provided that he acts in good faith; that the Registrar may rely upon an advocate's certificate as to the company's compliance with legal formalities when registering a company; for the interpretation of expressions used in the Law; for the making of ordinances in respect of specified matters; as to the power of the registrar to prescribe forms; as to the rights of the Crown and States to incorporate companies under letters patent or Projet de Loi; and that the Register is to be part of the public records of the Island.

There are seven schedules dealing respectively with the following technical matters -

(1) the form of the advocate's certificate required for the registration of a company's memorandum;

(2) specific savings and transitional provisions;

(3) the conditions subject to which a private company may become an unaudited company;

(4) the meaning of "holding company", "subsidiary" and "wholly-owned subsidiary";

(5) the criteria for assessing whether directors are fit and proper persons;

(6) the manner in which the Law is to be modified in its application to companies limited by guarantee (this schedule has now been superseded by the Companies (Alderney) Law (Guarantee Companies) Ordinance, 1995, in force 3rd May, 1995);

(7) the manner in which the Law is to be modified in its application to companies with shares with no par or nominal value.

Approved by the States 20.7.94. Royal Sanction 14.12.94. Awaiting registration.

CONSTITUTIONAL LAW

Hawkers

62. Order in Council: The Hawkers (Amendment) Law, 1994. - See 17.GLJ.46.

Royal Sanction 2.11.94. Awaiting registration.

CRIMINAL LAW AND PROCEDURE

Corruption

63 Order in Council: The Corruption (Alderney) Law, 1994. - Prohibits corruption in relation to the holders of public offices in Alderney. A "public office" means any office or employment of a person as a member, officer or servant of a public body. A "public body" means the Crown, the Court of Alderney, the States of Alderney or of Guernsey and any department of Her Majesty's Government. No person may corruptly solicit or receive, or corruptly give, promise or offer, any inducement or reward for any member, officer or servant of a public body for the doing of anything in respect of any matter or transaction in which the public body is concerned. There is a rebuttable presumption that, where it is shown that any money, gift or other consideration was paid or given to a person in the employment of a public body by a person seeking to obtain a contract from the public body, the money, gift or other consideration was paid corruptly in contravention of the Law.

Approved by the States 7.9.94. Royal Sanction 24.11.94. Awaiting registration.

Criminal proceedings - duty of disclosure of information to the defence - request for reward by witness - failure to disclose - whether miscarriage of justice

64. A was convicted by the Royal Court of robbery of a bank. Part of the evidence against him was that of O whom A had asked to look after the proceeds of the crime. O passed the money on to the police and subsequently received a reward. At the trial the only mention of the reward was that a reward had been offered. The Deputy Bailiff directed the Jurats that they should treat O as an accomplice, that his evidence was uncorroborated and that it would be dangerous to convict A in reliance

on it and also reminded them that a reward had been offered, which might colour the evidence of the witnesses. A appealed against his conviction on the ground that the prosecution had failed to disclose to the defence the fact that the question of the reward monies had been discussed between O and a police officer although the officer had made it clear during that discussion that he was not in a position to guarantee any monies being paid. HELD, following R v. Rasheed (The Times 20th May 1994), there was a duty to disclose any material casting doubt upon the reliability of a witness in the proceedings. All that was necessary to give rise to the duty was knowledge of something which ought to have been disclosed, whether written or oral. Display by a witness of interest in the possibility of getting a reward for his evidence, if known to the prosecution, must always be disclosed to the defence. On the question whether failure to do so had resulted in a miscarriage of justice, O's evidence, which included evidence of an admission by A at least of complicity, was a very important part of the case against A. If the Jurats believed it they were bound to convict. If the Deputy Bailiff had known of the conversation about the reward he might have given a much stronger warning to the Jurats. It was impossible to feel confident that the verdict would have been the same if proper disclosure had been made. Therefore, there had been a miscarriage of justice and the conviction would be quashed.

[Law Officers of the Crown v. Renouf - Court of Appeal 9.12.94 (HMP/NLP)]. (For full report of judgment of Court of Appeal see paragraph 80).

EMPLOYMENT

65. Order in Council: The Employers' Liability (Compulsory Insurance) (Alderney) Law, 1994. - Requires employers carrying on business in Alderney to be insured under an approved policy with an approved insurer in respect of any liability they incur to their employees for bodily injury or disease sustained by the employees arising out of and in the course of their employment in Alderney in the employer's business. The States may by Ordinance specify the minimum amount of such cover. The Law exempts from its requirements liability for injury or disease suffered or contracted outside Alderney; specifies categories of exempted employees in respect of whom insurance is not required (such as close family members and employees not ordinarily resident in Alderney); empowers the States by Ordinance to exempt employers specified in the Ordinance from the requirements of the Law; empowers officers of police and inspectors to require employers to produce for inspection certificates of insurance and other related documents; and requires employers to display in all workplaces copies of certificates of insurance required to be effected for the purposes of the Law.

Approved by the States 7.9.94. Royal Sanction 14.12.94. Awaiting registration.

FEES

66. The Fees (Amendment) (No. 2) (Alderney) Ordinance, 1994. - Increases fees for hawkers' licences.

In force 5.10.94. (Ordinance of the States of Alderney of 5.10.94).

HOUSING

67. Order in Council: The Housing (Control of Occupation and Development) (Alderney) Law, 1994. - See 16.GLJ.76.

Royal Sanction 22.6.94. Registered 23.8.94. In force, with the exception of sections 2, 4, 6(1)(a), 6(3) and 8(b) (relating to the control of occupation and which will come into force on a day or days to be appointed), on 2nd November, 1994: Ordinance of the States of Alderney of 2.11.94. (No. XXI of 1994).

MILK

68. Ordinance: The Milk (Retail Price) Ordinance, 1994. - Prohibits retail sale of milk at prices exceeding 48 pence per pint or half litre.

In force 7.12.94. (Ordinance of the States of Alderney of 7.12.94).

OFFICIAL GAZETTE

69. Order in Council: The Official Gazette (Alderney) Law, 1994. - See 17.GLJ.53.

Royal Sanction 22.6.94. Registered and in force 23.8.94. (No. XXII of 1994).

PRACTICE AND PROCEDURE (CIVIL)

Prescription - personal injuries - prescription period

70. In an action for damages for personal injury instituted within 3 years of the alleged tortious act, the defendant, A, claimed that the action was prescribed. The Court of Alderney, following the Guernsey Court of Appeal's decision in Smith v. Harvey (1981) (superseded in Guernsey but not in Alderney by the Law Reform (Torts) (Guernsey) Law, 1979), held that the proper period of prescription in personal injury cases in Alderney was six years. On appeal to the Royal Court A alleged, inter alia, that the Court of Appeal in Smith v. Harvey erred in not recognising the true classification of personal injuries claims as quasi-delicts which under the customary law of Normandy and thence the law of the Bailiwick were prescribed after a year and a day. It was conceded, however, that the Court was bound by the decision in Smith v. Harvey and the appeal was

dismissed by the Deputy Bailiff without full arguments being heard.

[Main v. Laughton - Requêtes and Appeals to the Royal Court 20.10.94 (JPG/JNvL)].

Variation of order of Court - necessity for representations to be heard - procedure on vue de justice

71. In proceedings relating to the interpretation of a restrictive covenant intended to preserve the view from A's property, the Court of Alderney made an order, following a vue de justice, that A was entitled to cut trees and shrubs on R's land by 5 feet. R subsequently complained that A had cut more than 5 feet and the Court, four months after its original decision, altered that order without giving the parties the opportunity of addressing the Court further. Two out of the six Jurats in the later Court had not sat on the original hearing. HELD by the Deputy Bailiff, there had been a breach of natural justice in that the Court had reached its conclusions on a variation of its original order without affording the parties the opportunity to address them and in the circumstances that two of the Jurats had not heard any evidence and the remainder had not done so for four months nor had the salient points been rehearsed to them by the Chairman. The appropriate course would be for the matter to be remitted to the Court of Alderney to be looked at de novo. The Deputy Bailiff also remarked that the question was a technical one which would be best resolved after hearing from a surveyor for each party. Furthermore, it was good practice on a vue de justice that, before the Court adjourned to make its site visit, Counsel should advise the Court of the precise matters which the Court was being asked to consider.

[Lewis v. Green - Requêtes and Appeals to the Royal Court 1.9.94 (unrep/NLP)].

PUBLIC HOLDAYS

72. Ordinance: The Public Holidays (Alderney) Ordinance, 1994. - States that Monday, 8th May, 1994 shall be a public holiday instead of Monday, 1st May.

In force 5.10.94. (Ordinance of the States of Alderney of 5.10.94).

RATING

73. Ordinance: The Alderney Occupiers' Rate (Amendment) Ordinance, 1994. - Specifies occupiers' rate for the year 1995 at 185 pence in the pound of the R.V. of the property in question and permits the rate to be levied on unoccupied property.

In force 5.10.94. (Ordinance of the States of Alderney of 5.10.94).

SOCIAL SECURITY

Supplementary benefit

74. Ordinance: The Alderney (Application of Legislation) (Supplementary Benefit) (Classes of Persons to whom the Law applies) Ordinance, 1994. Applies the Supplementary Benefit (Classes of Persons to whom the Law applies) (Amendment) Ordinance, 1994 (see paragraph 51) to Alderney.

In force 28.9.94. (No. XXI of 1994).

75. Ordinance: The Alderney (Application of Legislation) (Supplementary Benefit) Ordinance, 1994. - Applies the Supplementary Benefit (Implementation) (Amendment) Ordinance, 1994 (see paragraph 52) to Alderney.

In force 11.11.94. (No. XXIII of 1994).

TRUSTS

76. Order in Council: The Alderney Maritime Trust (Incorporation) Law, 1994. - Incorporates the Alderney Maritime Trust as a body corporate with separate legal personality. The principal purpose of the Trust is the raising of funds for the discovery, salvage, conservation and exhibition of historic shipwrecks lying in the territorial seas surrounding Alderney.

Approved by the States 17.12.93. Royal Sanction 22.6.94. Registered and in force 23.8.94. (No. XX of 1994).

WATER

77. Ordinance: The States Water Supply (Prevention of Pollution) (Amendment) (Alderney) Ordinance, 1994. - Redefines the controlled area within which pollution controls apply for the purposes of the States Water Supply (Prevention of Pollution) (Alderney) Ordinance, 1973.

In force 7.9.94. (Ordinance of the States of Alderney of 5.10.94).

SARK

INTERNATIONAL LAW

International organisations

78. Order in Council: The Organisation for Economic Co-operation and Development (Sark) Law, 1994. - See 17.GLJ.57.

Royal Sanction 2.11.94. Awaiting registration.

79. Order in Council: The European Bank of Reconstruction and Development (Sark) Law, 1994. - See 17.GLJ.58.

Royal Sanction 2.11.94. Awaiting registration.

80. [CRIMINAL DIVISION - APPEAL NO. 177]

1994 OCTOBER 17, 18, 19 and DECEMBER 9

THE LAW OFFICERS OF THE CROWN
v.
PAUL ANDREW RENOUF

Before: LE QUESNE, V.-P., HAMILTON and MACHIN, JJ.A.

Evidence - duty of disclosure of information to the defence - request for reward by witness - failure to disclose - whether miscarriage of justice

See paragraph 64.

N. Le Poidevin, for the Appellant.
J.R. Finch, for the Crown.

THE VICE-PRESIDENT:- At the conclusion of the hearing, we announced that the appeal would be allowed and the conviction quashed, for reasons which we should give later. I now deliver the Court's reasons for that decision.

REASONS FOR JUDGMENT

1. On Friday, 8th October, 1993, at about 5.50 in the afternoon, a man walked into the T.S.B. Bank at St. Martin's. He was carrying a pistol. It was a pistol for firing blanks only, and had a solid piece of metal in place of a barrel, but a hole had been drilled in this piece of metal to give the pistol a realistic appearance. With this weapon the man threatened the staff in the Bank and told them to move back from the counter. He then took cash from the tills amounting to £17,513.00, and left the Bank.

2. A man named Mark Andrew Solway and the Appellant, Paul Anthony Renouf, were charged jointly with this robbery. Solway pleaded guilty on the 27th January, 1994. Between the 9th October and the 14th October, 1993 the Police had interviewed him seven times. On none of those occasions had he made any admissions, but on the 19th January, 1994 he made a long statement to the Police, in the presence of his Advocate, admitting that he was the man who entered and robbed the Bank and describing in detail both events which preceded the robbery and events following it.

3. The Appellant, Renouf, pleaded not guilty on the 1st February. He was tried before the Deputy Bailiff and Jurats on that day and the following days. On the 4th February the Jurats unanimously found him guilty.

4. The Crown's case against Renouf fell into three parts. First, there was evidence of his presence near the scene of the robbery shortly before it occurred. One witness, who knew Renouf as a neighbour, was

walking N.W. along the Grande Rue at about 5.15. When she was opposite premises adjoining the T.S.B. Bank, Renouf walked past her going in the opposite direction. He was not looking where he was going, but his head was turned and he was looking toward the entrance of the T.S.B. Bank. Four witnesses, all of whom knew Renouf, saw him between 5.30 and 5.50 standing by Solway's car, which was parked by the back entrance to St. Martin's churchyard. These witnesses said the bonnet of the car was up and Renouf appeared to be working on the car, but one of them said he did not look as if he was actually doing anything or seriously repairing the car.

5. From the point at which Solway's car was standing, it is possible to walk into the churchyard or up the drive of the adjacent house, then through the garden of that house, over a grassy bank and through bushes into the car park at the back of the T.S.B. Bank. Of the four witnesses whom we have mentioned, one said that another person was standing by the car with Renouf just after 5.30. This other person was wearing a black balaclava over the head. Three members of the staff of the bank, who were behind the counter at the time of the robbery, said the robber was wearing a balaclava. One said it was petrol blue in colour, the second that it was dark coloured, and the third that it was black or dark grey. A girl who was sitting in a car in the car park behind the Bank at about 5.55 said she saw a man come out of the Bank, run into the car park and disappear through the bushes. His clothes were black and he had a big hood which he pulled down over his face.

6. Another part of the case against Renouf depended on the evidence of a witness called Dawson. He said he had visited Solway in prison on Monday, 18th October. (Solway had been arrested on Saturday, 9th October, released on the 12th and arrested again on the 15th.) Solway had then given him a message for Renouf, which the witness had delivered later that evening. The message was:

> "Don't say anything, as that's the only reason you've been released."

(Renouf had been arrested on the 12th October and released on the 15th. He was arrested again on the 3rd November.) After delivering this message, Dawson had added that Solway was concerned that their stories might not tally. Renouf had replied that there was nothing to worry about, because he hadn't said anything anyway.

7. Dawson admitted that he had helped Solway to handle the stolen money after the robbery. He had pleaded guilty to a charge of handling, and had been sentenced, before Renouf's trial. The Deputy Bailiff directed the Jurats that Dawson was an accomplice and his evidence was uncorroborated, and gave them a proper warning of the danger of convicting Renouf in reliance on it.

8. The third part of the case against Renouf was provided by the evidence of Jason Ogier. He said he was a friend of Renouf. On Thursday, 21st October he had visited friends at a house called Westwood. Renouf had been there, and had asked Ogier if he could take

care of some money from the T.S.B., perhaps about £8,000.00. Ogier had agreed to do so, and Renouf had said the money would be handed over some time at the week-end. Later that evening Renouf had said he had been behind the Bank with Solway's car pretending to be trying to fix it, though he had not in fact done any repairs to it.

9. On Saturday, 23rd October, Ogier said, he had again been at Westwood in the evening. Someone whom he did not name had arrived with a large amount of money. Shortly afterwards Renouf and his brother, John Renouf, had arrived and gone into the kitchen with the unnamed person, then Renouf had called Ogier into the kitchen. There had been a large amount of money on the table. John Renouf had asked where it came from, and Renouf had replied that it came from the T.S.B.. They had counted the money, which amounted to about £5,000.00. Renouf had then handed it to Ogier, saying it was the money he wanted him to look after. He had also said he would like Ogier to look after some more, and Ogier had agreed. Later in the evening Renouf had remarked that it didn't look like Solway was going to get his share of the money that was there.

10. On the 20th October (i.e. the day before Renouf's first request to Ogier) Detective Sergeant Smith had spoken to Ogier about the robbery. About 10.45 in the evening of the 23rd October Ogier met Mr. Smith by arrangement and gave him the money which he had received from Renouf. Mr. Smith said it amounted to £4,920.00.

11. Ogier said he had seen Renouf again at Westwood on the 26th or 27th October. Renouf had said he would like Ogier to look after some more money for him. Renouf had then made several attempts to speak to someone on the telephone, but had got no answer. He had been quite angry, and had said: "For fuck sake, Mark and me have risked 12 years to get this money, and we can't even get hold of it."

12. On the 31st October, when Ogier had been at a friend's house (not Westwood), the unnamed person had appeared with a small bundle containing money. At his request Ogier had counted it, and found it to be £2,000.00. He had taken it home. The next day he had arranged to meet Mr. Smith, and had handed the money to him.

13. Ogier said in cross-examination that he had not been charged with any offence as a result of these incidents.

14. The Deputy Bailiff directed the Jurats that they should treat Ogier as an accomplice, his evidence was uncorroborated and it would be dangerous to convict Renouf in reliance on it.

15. Renouf gave evidence. He said he had been at Westwood at about 4.30 on the 8th October. Solway had come in and said his car had overheated and he was going to ring a garage to fix it; Renouf had offered to have a look at it. He had gone home to get some tools and had then walked to the car, which was parked at the back of St. Martin's Church, passing the T.S.B. Bank on the way. He had got to the car about 5.25, found and corrected a leak in the pipe leading to the radiator, filled the radiator with water from a tap in the

churchyard, and returned home. He had not reported to Solway that he had mended the car. He had left it at about 5.50 or 5.55. While working on the car he had seen the four witnesses who had given evidence of seeing him there. There had been nobody with him by the car.

16. Renouf said Dawson had given him a message from Solway when Solway had been in custody, something like "Keep your mouth shut", or "Stick to no comment, that's the only reason why you've been released". Renouf had replied, "No comment".

17. As to the evidence of Ogier, Renouf said they had discussed the robbery at Westwood. After Renouf had been released on the 15th October, Ogier had started coming to Westwood practically every day, very inquisitive about the robbery and repeatedly asking Renouf whether he had been involved. Renouf had kept on telling him that he had had no involvement whatsoever. He had never asked Ogier to look after any money, nor had he been present when an unidentified person had brought money to Westwood. He had never seen any money at Westwood, nor had he handed money to Ogier. He could not remember having said, "It doesn't look like Mark will be getting his share the way it's going". He denied that while with Ogier at Westwood he had tried to 'phone someone, and then had said, "Me and Mark risked twelve years of our life for this money, and I can't even get hold of it." There had been no occasion when he had spoken to Ogier alone.

18. Detective Sergeant Smith said in evidence that a reward had been offered by the Bank; he believed it to be £5,000.00. This was the only reference in the evidence to a reward. When Ogier was asked in cross-examination what his motivation was to go to Mr. Smith, he replied: "My public duty basically".

19. The Deputy Bailiff referred to the reward once in his address to the Jurats. After saying that Dawson was an accomplice and Ogier should be treated as an accomplice, he added:

> "Remember also that there was some evidence of a reward being offered by the Bank and this again might colour the evidence of these two witnesses".

20. In the summer of this year Advocate Le Poidevin (who now represents Renouf, though he did not do so at the trial) wrote to H.M. Procureur. We have not seen the letter, but it is clear from the reply that one of the questions which the letter raised must have been whether there had been any discussion of a reward between Ogier and Detective Sergeant Smith. In his reply, dated the 1st September, 1994, H.M. Procureur wrote:

> "For the moment I reserve my position with regard to the principles laid down in R v Rasheed which may be the subject of argument in due course. However, <u>for your information only</u>, at this stage I can inform you that from the initial contacts made between Detective Sergeant G R Smith and the witness, Jason Ogier, the question of reward monies was referred to, but it was made, and continued to be made, clear by the officer that he was

not in a position to guarantee any monies being paid, but that once the matter had been concluded in the Royal Court a letter would be sent to the bank authorities who had offered the reward, outlining the involvement of the Crown witnesses. On the conviction of Mr Renouf on 4th February, the securities manager of the TSB in England made available the sum of £1,000 to enable Ogier to leave the Island for the time being. This departure was necessitated by the serious assault he had received from unknown male persons and to verbal and written threats made against him during the period of 21st December, 1993, when your client was committed for trial, until commencement of the trial.

On 15th February, 1994 Renouf was sentenced to 6 years imprisonment. On the following day, 16th February, a letter was sent by the police to the securities manager of the TSB outlining the outcome of the case and giving details of Ogier's involvement. This letter was accompanied by all the Guernsey Press reports on the trial. At a meeting held in March 1994 of the authorising committee of the bank, it was decided to make payment of a reward of £15,000 to Ogier. The cheque in this sum was handed to him on 23rd March. So in total, Ogier received a sum of £16,000."

Immediately after the robbery the T.S.B. Bank offered a reward of £5,000.00, increased on the 15th October to £15,000.00, for information leading to the arrest and conviction of the people who carried out the robbery.

21. The Procureur told us that he considered at the time of the trial whether the information now set out in the second sentence of the passage which we have quoted from his letter of the 1st September, 1994 should be given to the defence. He decided that there was no obligation upon the Crown to give it and no need to do so. Advocate Le Poidevin submitted that the fact that conversations had taken place between the investigating officer and Ogier about a reward should have been disclosed; the result of the failure to disclose it was that the trial was not conducted as openly as it should have been, and this constituted a miscarriage of justice within the meaning of Section 25(1) of the Court of Appeal (Guernsey) Law, 1961.

22. In 1981, the Attorney General in England issued guidelines on the duty of disclosure of information to the defence in cases to be tried on indictment. These guidelines do not go beyond the disclosure of witness statements. The duty of disclosure, however, extends more widely. The most recent English case cited to us on the point is R v Rasheed, decided in the Court of Appeal on the 17th May, 1994. It seems at present to be reported only in the Times of the 20th May, but Counsel put before us a full transcript of the judgment of the Court, (Steyn, L.J. and Kennedy and Mance, JJ.), delivered by Steyn, L.J..

23. The Appellant in that case had been convicted of manslaughter and other offences. The case against him, Steyn, L.J. said,

A

'was entirely circumstantial, and it largely depended on the evidence of Altheia Hall, a former girl friend of the Appellant.'

Before the trial, Hall's Solicitor had written to the Police as follows:

'Hall has further instructed me that she has been told by a friend that she might be entitled to all or part of the reward that was offered. Can you tell me whether she would be so entitled?'

B

The reply of the Police was:

'With regard to the reward, I am not in a position to disclose whether Hall might be entitled to make a claim. That will be matter between the senior investigating officer and the informant, whoever they may be. I am sure you appreciate the need for strict confidentiality'.

C

This exchange was not known to Counsel on either side at the trial. After the trial Hall was given a reward of £2,000.00.

24. Steyn L.J. said the appeal was 'based on the fact that Altheia Hall had asked to be considered for a reward about five weeks after the robbery and ten months before the trial'. He dealt with the matter thus:

D

"Mr Mansfield relied on the common duty of fair disclosure by the Crown as enunciated in Ward (1993) 96 Cr.App.R. 1. He submitted that the message was material and therefore disclosable. A passage in the judgment of the Court in Ward explains how the concept of materiality is used in two different senses. The passage reads as follows:

E

"The obligation to disclose only arises in relation to evidence which is or may be material in relation to the issues which are expected to arise, or which unexpectedly do arise, in the course of the trial. If the evidence is or may be material in this sense, then its non-disclosure is likely to constitute a material irregularity. The proviso makes it plain that 'material' means something less than 'crucial', because it contemplates that although there may have been a material irregularity, yet a verdict of 'guilty' can be upheld on the ground that it involves no miscarriage of justice."

F

Mr Mansfield submitted that the obligation to disclose arose because the document was relevant to the credibility of Miss Hall. He drew our attention to the fact that in Taylor, 11 June 1993, unreported except in The Times of 15th June 1993, in a judgment given by McCowan L.J., this Court regarded a request for a reward by a witness as relevant to his credibility and therefore disclosable.

G

In our judgment the duty to disclose extends to "any material casting doubt upon the reliability of a witness in the proceedings": see the Guiness advice given by the Director of Public Prosecutions to Chief Constables in August 1992 paragraph 8(i). The classic examples of material tending to undermine the credibility of a witness, which must be disclosed, are other statements and significant convictions of a witness. What about a request for a reward by the witness? There is, of course, nothing objectionable about the police or a company such as Securicor offering a reward for information which might lead to the arrest and conviction of a criminal. That is, however, not the point. As a matter of common sense a request for a reward by a witness may have a bearing on his motives for coming forward to give evidence. It must, therefore, always be disclosed by the police to the Crown Prosecution Service, and the prosecution must disclose it to the defence. That duty is a continuing one, and a failure to disclose such a document is, therefore, an irregularity in the trial within the meaning s.2(1)(c) of the Criminal Appeal Act 1968.

Mr Mansfield submitted that the irregularity was a material one in the second sense explained in Ward. He submitted that under s.2(1) of the Criminal Appeal Act 1968 we ought to allow the appeal on the main counts. Mr Coward QC submitted that the irregularity was not material. Alternatively, if it was material, he invited the Court to apply the proviso of s.2(1) of the Criminal Appeal Act 1968.

Turning first to the issue of materiality of the irregularity, Mr Coward pointed out that defence counsel knew during the trial that a reward had been offered. He suggested that defence counsel could have explored wth Altheia Hall whether she applied for a reward. Using our collective experience, we say at once that generally speaking experienced counsel (and leading counsel for the defence was very experienced) would not embark on such a speculative cross-examination. In any event, there is a positive duty to give fair disclosure. That duty is not contingent upon a request for disclosure, and the activation of that duty is not affected by the question whether, by due enquiries, the defence could have obtained the document in other ways. We hold these propositions to be self-evident. In this case it does not neutralise the irregularity to say that the information could have been obtained in other ways. We reject this argument."

The case of R v Taylor, to which Steyn, L.J. refers as unreported except in the Times, has now been reported at [1993], 98 Cr. App. R. 361.

25. The Procureur did not contest that the duty of disclosure is the same here as in England. He told us, as we have already said, that he had considered before the trial whether this duty obliged the Crown to tell the defence of the discussion between Mr. Smith and Ogier about a reward, and had decided it did not. There is no question here of

A an intention on the part of the Crown to ignore the duty to disclose. The Procureur, as it was his duty to do, considered whether he was obliged to tell the defence what had passed between Ogier and Mr. Smith. He decided he was under no such obligation.

26. In our judgment, this decision was mistaken. Until recently there has been very little authority dealing specifically with the position which arises when a witness has shown interest in the possibility of
B receiving a reward as a consequence of giving evidence. The two English cases which we have mentioned now make the position quite clear. In R v Taylor, although the case was decided on a different ground, the Court clearly regarded a request by a witness for a reward as something which should be disclosed to the defence. In R v Rasheed a witness had asked, through her Solicitor, whether she would be entitled to a reward which had been offered. The reply had been that the Police could not disclose whether the witness might be
C entitled to make a claim to the reward. That would 'be a matter between the senior investigating officer and the informant, whoever they may be'. The Court regarded the document recording this enquiry and reply as equivalent to a request for a reward, and held that it should have been disclosed.

27. In R v Rasheed there was, as we have said, a document recording the enquiry and reply. The decision of the Court dealt in terms with 'a failure to disclose such a document'. In the present case there was
D apparently no document existing before the trial or at the time of the trial recording the discussion between Mr. Smith and Ogier about a reward. This, in our judgment, makes no difference, nor did the Procureur make any such submission. Material facts known to the prosecution are no less known and no less material because they are not recorded in a document. The English Court of Appeal, in R v Maguire [1992], Q.B. 936, 957, stated its view that

> E 'a failure to disclose what is known or possessed and which ought to have been disclosed, is an "irregularity in the course of the trial".'

The clear inference is that all that is necessary to give rise to the duty is knowledge of something 'which ought to have been disclosed'. The Court has recently decided expressly that 'in principle the duty of disclosure applies equally to written and oral statements' R. v. Brown (1994), 1W.L.R.1599,1607).
F

28. In the light of the English cases, there can be no doubt that display by a witness of interest in the possibility of getting a reward for his evidence, if known to the prosecution, must always be disclosed by the prosecution to the defence. The reason, as stated by Steyn, L.J. in R v Rasheed, is that such a display on the part of a witness 'may have a bearing on his motives for coming forward to give
G evidence'. (Steyn, L.J. actually made this statement in reference to 'a request for a reward by a witness', but the facts of that case show that he was using the word 'request' in a sense wide enough to cover an enquiry whether the witness would be entitled to a reward.) The connection between the weight of evidence and the

disinterestedness of the witness giving it is obvious. Any material showing that a witness was not disinterested, but was looking for a reward if his evidence should lead to a certain result, is therefore relevant material requiring disclosure.

29. The Procureur's letter of the 1st September to Advocate Le Poidevin makes it clear that 'the question of reward monies' came under discussion from the beginning of the dealings between Ogier and Mr. Smith. Which of them raised the topic we do not know; but Mr. Smith, while making it clear that he could not guarantee any payment, said that 'once the matter had been concluded in the Royal Court a letter would be sent to the bank authorities who had offered the reward, outlining the involvement of the Crown witnesses'. This gave the witness ground for supposing that, if his evidence contributed to the conviction of Renouf, the Police would send to the T.S.B. Bank a report which would give him a good chance of getting a reward. Mr. Smith did nothing improper; but the position produced was obviously very close to that in R v Rasheed, which was held to require disclosure. Indeed, we do not doubt that if the Procureur had had the advantage of having the judgment in that case before him when he was considering whether the conversation between Mr. Smith and Ogier should be disclosed, his decision would have been different.

30. Having decided that there had been a breach of the duty to disclose, the English Courts went on to consider whether this amounted to 'a material irregularity in the course of the trial', this being one of the grounds for allowing an appeal laid down by the Criminal Appeal Act, 1968, Section 2(1). Here the inquiry must be different, because different grounds for allowing an appeal are laid down by Section 25(1) of the Court of Appeal (Guernsey) Law, 1961. Section 25(1) follows Section 4(1) of the original English Criminal Appeal Act of 1907, and provides that the Court shall allow an appeal if it thinks

> 'the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the Court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice'.

It is only the last of these grounds - that 'there was a miscarriage of justice' - that can apply to this case.

31. A recent authority on the meaning of 'miscarriage of justice' in this context is the judgment of the Privy Council in Berry v R [1992] 2 A.C. 364. That was an appeal from Jamaica, where the statutory grounds for allowing a criminal appeal are the same as the grounds laid down here by Section 25(1) of the Court of Appeal (Guernsey) Law. The Privy Council held that there had been a number of irregularities in the course of the trial in Jamaica, including a failure to disclose to the defence statements made to the Police by two important witnesses containing discrepancies from their evidence given at the trial. In approaching these irregularities, the Privy Council adopted the following passage from the judgment of the High

Court of Australia in Davies v R [1937] 57 C.L.R. 170, 180 (describing the practice of the Court of Criminal Appeal in England):

> "From the beginning, that court has acted upon no narrow view of the cases covered by its duty to quash a conviction when it thinks that on any ground there was a miscarriage of justice ... It has consistently regarded that duty as covering not only cases where there is affirmative reason to suppose that the appellant is innocent, but also cases of quite another description. For it will set aside a conviction whenever it appears unjust or unsafe to allow the verdict to stand because some failure has occurred in observing the conditions which, in the court's view, are essential to a satisfactory trial, or because there is some feature of the case raising a substantial possibility that, either in the conclusion itself, or in the manner in which it has been reached, the jury may have been mistaken or misled ...'

On this basis, the Privy Council went on, the prima facie view was that Berry's conviction should be quashed.

32. In the present case Ogier's evidence, which included evidence of an admission by Renouf at least of complicity, was a very important part of the case against Renouf. If the Jurats believed it they were bound to convict. Without Ogier's evidence there would have been a case to leave to the Jurats, but a case on which their verdict might have gone either way.

33. The Procureur told us that, if he had decided it was his duty to disclose the conversation between Ogier and Mr. Smith about a reward, he would have ordered that further statements be taken from both of them and possibly from Dawson. The content of those statements would have been given in evidence, and would have led to further directions by the Deputy Bailiff to the Jurats. The result, the Procureur submitted, would only have been that the Jurats would have thought that Ogier was a witness who might be interested in a reward. This was no more than common sense would have told them anyway, since there was evidence that a reward had been offered publicly.

34. We do not think it is possible to take so confident a view. The learned Deputy Bailiff obviously felt some hesitation about Ogier's evidence. He told the Jurats early in his address to them that the Crown conceded that Ogier should be treated as an accomplice; he went on:

> 'Remember also that there was some evidence of a reward being offered by the bank and this again might colour the evidence of [Ogier and Dawson]'.

Later in his address, the Deputy Bailiff said:

> 'You will approach Ogier's evidence in the light of my earlier direction. You may think it is not very satisfactory, that he is prepared to tell us about Renouf's apparent participation in

this robbery and dealings with the proceeds, and at the same time not tell us who X is on the grounds of fear of reprisals'. A

If the Deputy Bailiff had known of the conversation about a reward which actually took place between Ogier and Mr. Smith, he might have given a much stronger warning to the Jurats, and there can be no certainty that they would not have followed it.

35. The Procureur submitted that if the Jurats, having considered the Deputy Bailiff's warnings, were prepared to accept Ogier's evidence, B it was not very likely that they would have been deterred from doing so by knowledge that he had discussed with the Police the possibility of his being rewarded for his evidence. We do not accept this argument. The Jurats may have believed Ogier's evidence in spite of his being an accomplice (or as good as an accomplice). It does not follow that they would have felt the same confidence if they had known of other possible reasons for doubting the purity of the motives of his evidence. C

36. We therefore find it impossible to feel confident that the verdict of the Jurats would have been the same if proper disclosure had been made of the conversation between Mr. Smith and Ogier about a reward. It follows, to use the language of Davies v R, that it is unsafe to allow the conviction to stand, because there was a failure to observe a condition essential to a satisfactory trial.

37. In Berry v R the Privy Council, having come to what they called a D prima facie view to this effect, went on to consider whether the proviso should be applied. They followed the test established in England under the Act of 1907 by the House of Lords in Woolmington v D.P.P. [1935], A.C. 462 and Stirland v D.P.P. [1944], A.C. 315. In the former case, Lord Sankey, L.C. said (at pp.482/3):

> '... we think it impossible to apply [the proviso] in the present case. We cannot say that if the jury had been properly E directed they would have inevitably come to the same conclusion'.

In the latter case, Lord Simon, L.C. said (at p.321) that the proviso

> 'assumes a situation where a reasonable jury, after being properly directed, would, on the evidence properly admissible, without doubt convict'. F

In Berry v R the Privy Council declined to apply the proviso because they did not 'feel able to say that the jury would inevitably have convicted' if the irregularities had not occurred (at p.385: the emphasis is used by their Lordships).

38. When an appeal is allowed on the ground that there was a miscarriage of justice at the trial, the application of the proviso presents certain difficulties. The proviso can be applied only if this Court G 'considers that no substantial miscarriage of justice has actually occurred'. Theoretically, it may be possible to imagine a case in

which the Court might conclude first that there had been a miscarriage of justice, but secondly that the appeal should be dismissed because the miscarriage of justice had not been substantial. However, in order to apply the proviso the Court must, on the authorities from which we have quoted, be satisfied that, if the fault at the trial had not occurred, a reasonable jury properly directed would 'without doubt' have convicted the defendant. If, as in this case, the Court has decided that there was a miscarriage of justice because there was an irregularity at the trial which makes the conviction unsafe because without it the verdict of the Jurats might have been different, it is obviously impossible for the Court to go on to decide to apply the proviso because without the irregularity the verdict of the Jurats would 'without doubt' have been the same. This difficulty is expressed by Lord Dilhorne in his speech in Stafford v D.P.P. [1974], A.C. 878, when he says (at p.893), using the terms of the English Act of 1968, 'of course, the proviso cannot be applied where the court thinks the verdict unsafe or unsatisfactory'.

39. In Berry v R the Privy Council did go on to consider whether the proviso should be applied after reaching the prima facie view that the conviction should be quashed as unjust or unsafe. Their decision, as we have already said, was that they could not apply the proviso. The judgment does not explain on what basis their Lordships, having reached their 'prima facie view' that the conviction should be quashed as unjust or unsafe, decided there was room in that case to consider the application of the proviso. There was no reference to Lord Dilhorne's words in Stafford v D.P.P..

40. Whatever the explanation of that may be, the position in this case is in our judgment clear. In order to decide whether there was a 'miscarriage of justice' within the meaning of the first paragraph of Section 25(1) of the Law, we had to consider whether the verdict of the Jurats would have been the same if the conversation between Ogier and Mr. Smith had been disclosed. We found it impossible to feel confident that it would. This left no room for the application of the proviso, because the question whether, without the irregularity which occurred, the verdict of the Jurats would without doubt have been the same had already been answered in the negative. We therefore thought it unnecessary to hear further argument about the proviso.

41. For these reasons we allowed Renouf's appeal and quashed his conviction. In his notice of appeal he also asked for leave to adduce certain additional evidence, and raised other grounds including the failure to identify the unnamed person mentioned by Ogier, the failure to disclose to the defence before the trial Solway's statement containing his confession, and some alleged misdirections of the learned Deputy Bailiff to the Jurats. The conclusion which we have set out made it unnecessary to consider any of these matters.

Appeal allowed and conviction quashed.

81. [CRIMINAL DIVISION - APPEAL NO. 182]

1994 AUGUST 1

THE LAW OFFICERS OF THE CROWN
v.
ANTONY CHENTRENS

Before: CALCUTT, CRILL and GLOSTER, JJ.A.

Sentence - misuse of drugs - importation of Class A drug

See paragraph 12.

A.M. Merrien, for the Appellant.
A.C.K. Day, Q.C. (H.M. Procureur), for the Crown.

SIR DAVID CALCUTT:- On 17 May 1994 this applicant, Antony Chentrens, having pleaded guilty, was convicted before The Royal Court on the one charge in an indictment, charging him with the improper importation of drugs.

He was sentenced to four years' imprisonment to run from his arrest, which had taken place on 8th April. Leave to appeal has been refused, so this matter comes before us as an application for leave.

The drugs in question in this case were 39 capsules of ecstasy, which is a Class A drug. Each capsule, according to the record, contained ecstacy of the amount of 78 milligrams; and, according to the record, there would have been a total street value in the Island of Guernsey of between £1,170 and £1,365.

The brief facts giving rise to this prosecution are these. The applicant resides in England. It appears that he had bought the drugs commercially in England. On 8 April he came with them on a flight which came to this Island from Gatwick. Apparently it was his first visit to this Island.

He was stopped at Customs and searched by customs officers. He was not in any sense physically obstructive, but he told lies and did nothing to make the customs officers duties' any easier.

He was seen in a room which had been checked, to make sure there was nothing untoward in it before he came into it. There was found under the chair on which he had been sitting a container containing the offending drugs. It is right to say that the drugs were not hidden on any part of his body.

He was arrested and taken into custody. It is difficult to say precisely what his intentions were and would have been had he not been arrested. It well may be that he would have used some of the drugs for his own purposes, but what he had was plainly in excess of what he would have had for his own personal consumption.

A It appears to us that he would have some sold some of the drugs had the opportunity arisen. In the circumstances in which he came to Guernsey, which was a one-night visit, it is probable that the opportunity might indeed have arisen and he would have kept an eye open for any opportunity which might have presented itself. But so far as his intentions concerned, it is right to remember that the quantities themselves were comparatively small.

B The importation of a class A drug must always be a very serious matter, particularly in an island community such as Guernsey. But there are, in this case, no aggravating features and there has been no personal benefit from drug trafficking for this applicant in this case. He pleaded guilty to the charge.

The applicant was born in March 1967 and so is 27 years of age. He was a married man, but is now divorced, but there is a son of that union. There has been, so we are told, a stable relationship with another woman. He
C was not in work at the time of his arrest. He has previous convictions, but these relate mostly to traffic matters and there are no drug-related convictions.

Our attention has been drawn to a number of cases in the Island of Guernsey. Two appear to us to be directly relevant. In Law Officers of the Crown v. Fallaize, 16 GLJ 19, there were 200 capsules of ecstacy which is obviously a very much greater quantity than in the present case. That
D was held to deserve a sentence of 5 years' imprisonment.

In Law Officers of the Crown v. Deletang, 17 GLJ 10, there were 73 capsules of ecstacy, but there were also other drugs involved. In so far as the ecstasy was concerned, the appropriate penalty was held to be 42 months' imprisonment. Of course, it is perfectly right that we must have regard to the whole of the indictment before the Court; but that was the position, so far as penalty for the ecstasy drug was concerned.

E All cases previously considered by this Court can be for the present court's guidance only: there can be no perfect tariff. Each case has to be considered in its own circumstances.

In the view of the Court, the sentence of four years' imprisonment was too high. We take the view than an appropriate sentence would have been one of three years' imprisonment.

F Accordingly we grant the application for leave. We treat the hearing as the hearing of the appeal and we substitute a sentence of three for four years' imprisonment. The three years will run from 8 April 1994.

Leave to appeal granted and appeal allowed to the extent that the sentence was reduced from four years' to three years' imprisonment.

G

82. [CIVIL DIVISION - APPEAL NO. 194]

1994 AUGUST 1

RICHARD ANDREW FRANCIS HUGO **Plaintiff**

v.

JONATHAN CHARLES SKILLETT **Defendant**

Before: CALCUTT, CRILL and GLOSTER, JJ.A.

Torts - trespass to land - quantum of damages

See paragraph 54.

The Plaintiff in person.
I.H. Beattie, for the Defendant.

SIR DAVID CALCUTT: In the latter part of 1987 and through into 1988, the Plaintiff, who lives at a property called Harcourt, brought civil proceedings against the Defendant, who owns Route Charles, in the Petty Debts Court for damages for trespass. In civil proceedings of this kind, in the Petty Debts Court, there is a limit to the amount of damages which can be awarded, and that limit is £1,000.

The Magistrate having heard the evidence and the submissions held that there was no trespass and he dismissed the Plaintiff's claim. The Plaintiff appealed to the Royal Court where it was conceded that there had been trespass. The Royal Court ordered that damages should be assessed at no more than £10.

The Plaintiff has further appealed to this Court and our powers arise under Section 13 of the Court of Appeal (Guernsey) Law, 1961. I should make it clear that no point has been raised in the proceedings before us on jurisdiction.

Our duty is simply to consider an appeal against quantum of damages, but it does give rise as to the nature of the appropriate damages. Should it simply be nominal damages, or should it be ordinary damages for actual damage which has been sustained, or should it be exemplary damages?

The land with which we are concerned is in the parish of Saint Peter Port. Route Charles is a road which passes the Plaintiff's property of Harcourt and indeed passes other properties which are adjacent to Harcourt. So far as we are concerned, there is a strip of land about 50 yards long where Route Charles borders on to the property of the Plaintiff. Between 1984 and 1988, certainly on two occasions, the Defendant carried out certain works at the point where one property joins the other.

Precisely what works were carried out is in dispute, but it is plain that the works included the lopping of trees, the cutting back of the hedge, the removal of at least some of the top soil and the laying of gravel.

A There are a number of photographs which have been before the Court. They run alphabetically from A through to L. The first few of the photographs were taken in 1984, that is A through to H. The remaining photographs, from I through to L, were taken in about March 1988.

If one looks at the photographs towards the end of the bundle, one gets the best picture of the position as it was in March 1988. If one looks at the photograph labelled K, one can see on the left hand side that the
B trees and the shrubs have been cut back. Coming from the left of the photograph to the right, one can then see an area where there is fresh gravel - an area which has been described as 'a footpath', though I doubt if that is its true purpose. Then one can see, slightly to the right of that, a number of stones which are standing in a vertical position. And that is followed by what appeared to be three rows of stones which appeared to be lying horizontally. Then there is the tarmac surface of the road beyond that.

C The works that were carried out in March 1984 are shown in the earlier of the photographs. If one takes photograph A, one can get some idea of the work. There there is work that has apparently been done on the edge of the road; and that is also shown in some of the later photographs. Equally one can see in the last photographs to which we have referred, I through to L, the work which was done in about March 1988. There is no doubt that all of these works were indeed carried out by the Defendant.

D When this matter was before the Magistrate, the central question was 'Where did the boundary run'? Or, to put it another way, 'On whose land was the work being done'?

If it was being done on the Defendant's land, as the Defendant contended, then plainly there was no trespass, because he was only doing what he was entitled to do. But equally if it was being done on the Plaintiff's land, as the Plaintiff contended, then plainly there was trespass. The central
E area where the work was done, and done in various stages, was the footpath.

Who owned the land comprising and adjacent to the footpath was, as I say, central to the issues which had to be determined. Much of the evidence before the Magistrate revolved on that issue. The Magistrate's finding was perfectly clear and it is to be found page 54 I. The Magistrate said:

F > "Upon consideration of the evidence and the submissions of the parties, I find that the Plaintiff has failed to prove his title to the footpath".

It appears to me to be quite plain that the Magistrate's subsequent views were all based upon that finding. If the footpath was the land of the Defendant, then the Defendant could treat it in whatever way he chose, and indeed he would have been entitled, in my view (although we have not heard argument about it), to cut back the trees or shrubs which might have
G overhung his land.

Although the Magistrate, on the same page to which I have just referred, spoke of 'damage' having been done, I do not think that he can have been

using 'damage' in a legal sense, because there was no wrong from which any legal damage could have flowed. A

Before the case reached the Royal Court, on appeal from the Petty Debts Court, the Defendant conceded, and no doubt for good reason, that what I have been calling 'the footpath' belonged to the Plaintiff.

This, as it seems to me, entirely alters the case which we have to consider. Through no fault of the Magistrate, his views concerning the evidence have, in the main, now to be put to one side having regard to that concession. B

Once that concession is made, then several things, as it seems to me, flow from it.

First, it was not the Defendant's land and it would not have been for the Defendant to do with that land as he pleased.

C

Secondly, the Defendant created the footpath on what was in fact the Plaintiff's land and, however desirable or undesirable that might have been, the Defendant had no business to do that.

Thirdly, the Defendant cut back trees on and over land which was not his;

Fourthly, he cut back a hedge on and over land which, again, was not his.

D

Fifth, and perhaps more importantly, what he did had the effect of widening his own piece of land in this sense. He was clearing back undergrowth which had been growing on his neighbour's land, and the visual effect would have been to increase the apparent width of his own holding of land.

Lastly, and it seems to me of importance, what he did had the effect of reducing the Plaintiff's privacy.

E

It is the Plaintiff's land and there has been in my view a trespass to it. Actual damage has been sustained and mere nominal damages could not be appropriate.

This action was brought in the Petty Debts Court and the limit of that jurisdiction is £1,000. Compensation in the sum of £1,000 does not seem to me to be £1 too much in respect of these admitted works on someone else's land.

F

The disputed items, both of ownership and work, need not therefore be considered.

Equally it is not necessary for us to go into the issue which has been raised of exemplary damages.

For my part, I would allow this appeal and I would order that the Defendant should pay the Plaintiff £1,000, substituting that for the award which was made below of £10. G

A SIR PETER CRILL: I agree.

MISS ELIZABETH GLOSTER: I also agree.

SIR DAVID CALCUTT: Now you ask for your costs here and below?

APPELLANT: I certainly do sir, yes.

B SIR DAVID CALCUTT: Can you resist that?

ADVOCATE GREENFIELD: I don't think I can sir.

SIR DAVID CALCUTT: There will be an order for costs both in this Court and in the Royal Court.

C **Appeal allowed and award of damages increased from £10 to £1,000; costs awarded to the Appellant**.

83. [CIVIL DIVISION - APPEAL NO. 207]

1994 AUGUST 2,3

D **GRAHAM CORBIN, ANTHONY ARTHUR HALL, WILLIAM VAN ZANTEN and GRAHAM LE MAITRE**
respectively Chairman, Treasurer, Vice-Chairman and Secretary Appellants of THE GUERNSEY RIFLE CLUB (PISTOL SECTION)
v.
ROGER JAMES DADD and MARY DADD Respondents

E Before: CRILL, CALCUTT and GLOSTER, JJ.A.

Torts - nuisance - defence of statutory authority - public interest

See paragraph 53.

Advocate J.P. Greenfield, for the Appellants.
F Advocate N.J. Barnes, for the Respondents.

SIR PETER CRILL, C.B.E: This is an appeal from the decision of the Deputy Bailiff and Jurats of 10th May 1993, which found the Appellants, members of the Guernsey Rifle Club, had caused a nuisance by shooting at Hougue Patris Quarry.

The Court found that the nuisance was only capable of abatement by a total cessation of shooting, and accordingly imposed an injunction, and I quote from the Order:-

G "...restraining the Defendants from continuing the said nuisance..."

The Court stayed its operation for five years subject to a number of conditions which were settled by the parties after the Court had found for the Respondents on the issue of nuisance. A

The learned Deputy Bailiff had ruled that the defence of statutory authority was not available to the Appellants. Whether he did so after a preliminary hearing on this point or in the directions to the Jurats is in this context of no significance.

The main argument by the Appellants is that the Deputy Bailiff was wrong and that the defence of statutory authority was available to the Appellants. They also complain about some remarks he made in the directions to the Jurats that may have influenced their decision. B

The Respondents have appealed against the five year suspension of the injunction and also on part of the costs.

The background to this appeal may be stated shortly. Since at least 1974 the Guernsey Rifle Club has shot in Hougue Patris Quarry. It was authorised to do so by the Island Development Committee, provided, and I quote from the relevant letter of the President of that committee:- C

> "...the experience of twelve months shooting..." reveals "... that the activity does not constitute a public nuisance."

In 1977, the States of Deliberation ("the States") approved recommendations of the Island Police Committee to prepare legislation to control possession, use and dealing in firearms and ammunition. That legislation was enacted in 1983 as the Firearms (Guernsey) Law ("The Law") and was approved by an Order in Council. D

On 30th September 1987 the States approved the Firearms Ordinance, 1987 ("The Ordinance"). Both the Law and the Ordinance came into effect on 1st October 1987. In August 1988, the Respondents acquired their house, Les Hanières, which adjoins Hougue Patris Quarry. In August 1989, the Appellants bought Hougue Patris Quarry. The nuisance complained of, it was said, started in August 1988 and the action against the Appellants was started in February 1993. E

During this appeal Counsel for the Respondents submitted that should the Court find in favour of the Appellants on the issue of statutory authority, the States did not have the power to enact the Ordinance which, if taken with the enabling Law, might be said to take away the Respondents' rights to bring an action in nuisance. I am not able to accept this submission. The Law was sanctioned by the Privy Council according to the usual practice, and it is from that Law rather than from a residual common law power that the Ordinance derives its authority. Accordingly, the interesting observations of Sir John Loveridge, Bailiff, in Law Officers of the Crown v. Alderney Meat Products Ltd. and Drifield Estates Ltd., a criminal appeal from the Court of Alderney determined by the Royal Court sitting as a Full Court on 7th February, 1977, are not in point, notwithstanding that the Ordinance, after reciting that it is made in the exercise of the powers conferred on the States by Sections 19, 31, F G

A 34 and 50 of the Law, adds the words "...and all other powers enabling them in that behalf..."

I turn now to the main issue of statutory authority. The heading to Part I of the Law reads:-

" PART 1

B PROVISIONS AS TO POSSESSION, HANDLING AND DISTRIBUTION OF WEAPONS AND AMMUNITION; PREVENTION OF CRIME AND MEASURES TO PROTECT PUBLIC SAFETY."

Article 19 of the law is as follows:-

"19. (1) A person commits an offence if, without the written authority of the Chief Officer, he fires a firearm of any class in any place other than on a range approved, in accordance with the C provisions of this section, for the firing of firearms of such class.

(2) The States may from time to time by Ordinance provide:-

(a) for regulating or prohibiting the use of a place as a range for firing of firearms;

D (b) for the entry into and inspection of any premises used or intended to be used as a range for the firing of firearms;

(c) limiting the class or classes of firearms and ammunition which may be used on a range; and

(d) for any incidental and supplementary matters for which the States deem it necessary to provide.

E (3) A person commits an offence if he contravenes, or attempts to contravene or fails to comply with any of the provisions of an Ordinance made under this section.

(4) In this section the expression "firearm" means a firearm to which section one of this Law applies."

F The Ordinance in the Schedule lists the approved ranges, including Hougue Patris, and imposes on their use certain general and specific conditions.

I now consider the question of the law. An individual's specific right to sue in nuisance, as here, can only be taken away by statute that either expressly or by necessary implication does so. Furthermore, those who seek to establish that the legislature intended to take away such private rights have the burden of showing that such an intention appears by express words or necessary implication.

G

These are Lord Blackburn's observations in the case of the Managers of the Metropolitan Asylum District (the Appellants) v. Hill and Others, (the Respondents) (1881) AC 193, at page 208. His Lordship said also at page

203 that "What was the intention of the Legislature in any particular Act is a question of the construction of the Act." A

Thus in the instant case two questions arise; did the States address the matter at all and if they did, then did the Law take away the Respondents' right? It is therefore to the Law and the Ordinance to which the Court has had to direct its attention. Not unexpectedly, I can find no express provision in either. What then of necessary implication? I have already cited the heading to Part 1 of the Law; it seems to me that taken with sections 14 to 24 it appears that the Law is designed primarily, as B indeed its title indicates, to prevent crime and to preserve public safety, and it also, of course, creates a new authority for the police to enter upon premises which otherwise they would not be able to do. Section 19 (1) creates also a new offence of shooting with a firearm other than on an approved range or ranges. The Ordinance in my opinion does no more than I have said, than list those ranges. The Ordinance links up with the Law by setting down the details of certain further range offences. The purpose of the Law does not, in my view, C encompass the overriding of the private rights of individuals. Section 19 (2) does no more than predicate an existing use. It empowers the States to flush out the offences created by Section 19 (1).

I do not think it useful to distinguish between a mandatory and permissive authorisation in this case, as has been done in a number of the cases cited to us. The Guernsey Rifle Club has been given the power to use certain ranges, however that power may be described. Speaking for D myself, I cannot find the necessary implication in the Law canvassed so ably by the Appellants' Counsel. The essential difference here is that the Law was creating offences related to public order. Its purpose was quite different from the English and Commonwealth cases cited to us, and certainly if we had to compare those cases with ours I do not think that they have the persuasive effect or even, as in the case of the Privy Council, the case of the Canadian Pacific Railway v. Park (1899) AC 535, to be binding, as otherwise that particular case might have been on this Court. E

In my opinion therefore, the Appellants fail on the main issue of statutory authority.

As for the point that the Deputy Bailiff's remarks at pages 392 G and 395 B/C of the transcript may have influenced the Jurats in arriving at their decision, I do not consider those remarks to be of sufficient weight to justify my holding that they were, in fact, a material misdirection. F Indeed, the Deputy Bailiff qualified whatever comments he might make upon the evidence at page 376 when he said the following:-

> "As to the facts, you alone are the judges. It is for you to decide what evidence you accept and what evidence you reject or of which you are unsure. If I appear to have a view of the evidence, or of the facts, with which you do not agree, reject my view. If I mention or emphasise evidence that you regard as unimportant, disregard that G evidence.

A If I do not mention evidence that you regard as important, follow your own view, and take that evidence in to account. You must decide the evidence- the case on the evidence that you have, and the reports and agreed documents that have been put before you."

I come now to the Respondents' cross appeal on the length of the suspension of the injunction and costs.

B In the course of his address to us, Mr. Barnes, for the Respondent, who put his case as cogently as his opponent, conceded that the blanket injunction might have gone further than was necessary, but whilst this may well be so, the Guernsey Rifle Club were adamant that a limited injunction of that nature was too restrictive and, indeed, was useless. But if a blanket injunction was intended I think it might have been better for the Act of the Royal Court in place of the words "...an injunction restraining the Defendants from continuing the said nuisance..." to have said, "...an injunction restraining the Defendants from any shooting at the said
C site..." I make this comment only as a suggestion, to avoid any future argument as to what was intended to be covered by the injunction, although it is true to say there are some details in the Respondents' pleadings.

No cases were cited to the Court where an injunction had been suspended for more than two years. I consider that in the circumstances of this case three years would be the proper figure to impose and that should date from the judgment of the Royal Court.

D

On the question of costs, I am satisfied that the Deputy Bailiff acted judicially, and therefore I do not propose to disturb his order in this respect.

I only wish to add this; had I been able to consider the matter of public interest and so as to decide, in the words of Lord Roskill in Allen v. Gulf Oil Refining Ltd. (1981) 1 AER 353 at page 365, that, as he
E said, in balancing the public interest with private rights, "... the lesser private right must yield to the greater public interest...", I should have had regard to the considerable esteem in which the Court was told the Guernsey Rifle Club is held in the Island, quite out of proportion to its numbers, as well as to the obvious need to ensure that the Island Police had adequate shooting areas in which to train their forces. Although these two matters would not have been conclusive, nevertheless, the weight to be attached to them might be greater in a
F small Island than in a larger community which has a much wider area of land to dispose of.

The result therefore, is that I would dismiss the appeal and allow the cross appeal in part, and I would accordingly invite Counsel to address the Court on costs.

ADVOCATE BARNES: I would ask for costs.

G SIR PETER CRILL: Yes, have you any observations Mr. Greenfield?

ADVOCATE GREENFIELD: No sir, only that the cross appeal has not been allowed in full and, of course, the transcript is the biggest single item

of expense in this appeal and would have been necessary, no doubt, for the cross appeal as well. The Court has a discretion, and I would ask the Court to, as far as the transcript is concerned, to ask each side to bear one half of the cost of that.

SIR PETER CRILL: There will be an order for costs for the Respondents.

Appeal dismissed; cross appeal allowed to the extent that the stay of the injunction was reduced from five years to three years; costs awarded to the Respondents.